

E

S H M I R

N S P I R A C Y.

S E.

100/10
RM

Resume of Defence Arguments

By

Mirza Mohd. Afzal Beg.

~~SECRET~~

(10th May to 11th
June, 1961.

X

Issued By

Legal Defence Committee,

J&K State.

Page: 5133. Jammu

1st Day Proceedings.

The "Dawn"
Canal Road,
Jammu, Tawi

707 Srinagar

32202 New Delhi

Kashmir Conspiracy Case-Resume of Defence
arguments dated, 10 th May, 1961.

In the Court of Special Magistrate, Shri N.K.Hak, Mirza Mohd. Afzal Beg initiating his arguments on behalf of accused stated in reply to Mr. Pathak that he was convinced for a moment that power of eloquence can change white into black and vice versa. When this impression faded away, he saw the realities and found the real merit. He would try to reveal the story built up against the accused and show that the thesis built up is unmaintainable, untenable and unsustainable. Sometime a document may be assumed only to show that conclusions are not correct and logic is wrong. That does not mean that that document is admitted. Arguments advanced by Prosecution and conclusions drawn are untenable. Nothing is conceded. Real stand of the accused whatever has been stated under 342 Cr.P.C. No direct or indirect relation is attached with any document. The state of affairs here is unfortunate. Most of the accused have to defend themselves. Dual capacity has been thrust by circumstances on them. The accused has to argue and also to put his own side. This is a difficult task. Nothing should be construed as admission against any of the accused. Arguments will be very brief because the learned counsel on the other side told at the end that this was an enquiry case and thus it was enough only to state broad facts of the case but instead the elaborated exhaustively every bit of any fact alleged by the prosecution. Brevity is called for. The investigations made in this enquiry were peculiar in nature. This case is a concoction, motivated by political ends which have been going on before 9th August 1953 even and is going on uptill now. Witnesses like Japanese War criminals were indoctrinated here, brain-washed and shadowed upto the witness box. Even gestures, hints and leading questions were taken recourse to. During intervals mistakes were set right and all this was brought to the notice of the court. If men of high standing of Govt. of India can go to these lengths, how is advisable for defence to expose their concoction at this stage? The accused want a fair trial and they were ready to help Govt. of India to expose those who are behind this concocted case. The arguments will be illustrative and not exhaustive. What is omitted should not be construed to mean that that part of the Prosecution story is correct. The case has been instituted u/s 121 A and 120B read with Rule 32 of Security Rules. Referring to the concerned sections Mr. Beg submitted that the allegation was that there was a conspiracy to overawe J&K Government by force and overthrow Bakshi Ghulam Mohd. by that act. Letters, posters, pamphlets alleged to have been written to or from Pakistan will show that no such reference was made. These documents do not contain any evidence of use of force or armed resurrection. Sher-e-Kashmir Zindabad or Raishumari Zindabad never mean that. The judge is to be a cold-blooded judge, he may deprecate a document but he has to see whether the document contains any evidence for use of force or overthrow the government. A document however abusive in language should be judged only on its merits, as given in Sections 121A Penal Code. Bakshi Ghulam Mohd. neither means the J&K Government, nor J&K State.

Referring to Rule 32 of Security Rules, Beg Sahab submitted that this rule deals with prejudicial acts. If recourse is taken to this rule then this case will not be a Sessions case. Even a prime facie has not been made. He quoted some authorities and showed what would be the judicial outlook in judging the attitude of the accused in this context. It has been alleged that the accused preached violence, hatred, etc. against the government. Modern judicial outlook at freedom, independence and democracy needs great consideration. Law of the past is a dead letter today. He referred to Sec. 124A of the Penal Code which has been declared ultra-vires of the constitution. He further stated that what was sedition yesterday is treason to-day. Sheikh Abdullah was once sentenced u/s 124A. Prosecution in charging us under section 121A has taken full recourse to this very section. He referred to Dr. Ram Manohar Lohia's agitation

in U.P. for non-payment of rent and also to Punjab agitation. The slogans were raised "Jagoo Mama Hai Hai" and "Khachar Khachar Hai Hai." He affirmed that any slogans which may even turn the show against any government did not constitute an offence so long as violence or creating hatred was desired. He referred to Allahabad 1955 in this connection, and asserted that public criticism was guaranteed to the highest maximum at present.

He stressed that spirit of the present time should be taken note of. Here in this court words used by some person like 'Bharti agent', 'Tatti ki makhi' are being alleged to be a conspiracy against the Kashmir Government. He termed these as most fantastic and ridiculous. The leaflets concocted by Sheikh Ghulam Qadir himself were made the basis of alleged conspiracy.

Referring to the categories of the documents Beg Saheb submitted that it was right not only to take an over-all picture was argued by Mr. Pathak but also over-all picture of its parts. But when taken into consideration, but when Mr. Pathak came to this fantastic type of evidence, he avoided this all. Mr. Pathak even wrenched many a passage out of the context and gave a picture absolutely out of context some places he gave his own translation of certain passages which was objected to by the accused.

Dealing with the War Council period documents, Beg Saheb submitted that all the accused denied the existence of any such organisation. He stated that the documents were manufactured by CIA head by Sheikh Ghulam Qadir. Assuming that these documents were written by some other persons as alleged by the prosecution, he asked what was in those documents and how those could be treated as high treason or how the language could be considered as cryptic. Does 'roti ch' mean in any way a cryptic word. The language was fantastic and the thesis built up absurd.

Court: It depends upon the capacity of the man writing it.

Beg Saheb: Yes Sir, a half-wit and CIA is full of them. Prosecution cannot have it both ways. Does this document Exp. 109A give any ingredient as laid down in section 121 A Penal Code? It has no evidence of any allegation. No where no mention of force or shooting of force is made. In law this document is meaningless. Far more noticeable 'Mama Hai Hai' and violation of rent law as stated above.

Referring to Exp. 109A, Beg Saheb submitted that this document is produced to prove high treason and cryptic language but the facts are that on 9th August due to mass killings many had become suffering and were in distress. If the writer conceals his identity, the condition of those days should be considered when people were ruthlessly tortured by the police. The language used in this document is so clean and clear that to call it cryptic language is absurd.

Court: What is the meaning of 'I will send one book by which Muslims will be incited.'

Beg Saheb: Apart from CIA's manipulations this language may be vulgar but does it in any way mean overthrow of Bakshi Government and does it come under the purview of section 121A or prejudicial to the State? It may be a defamation. Mere idea is no offence. Even there are historical allegations are now unworthy of consideration. In this document the writer could be easily traced because he had given names and the names of the persons concerned. This has not been done. When that was so, wherefrom is the high treason proved?

Discussing the documents under Exp. 109 series Beg Saheb submitted that it is alleged that these documents were recovered from a bathroom in the house of Ghulam Hasan Kanth where they were found in a pitcher of water. These papers reveal nothing incriminating. The conclusion that they were so will be an illogical one. Prosecution asserts that they were in this pitcher so that they could not be detected. This only shows the intensity of repression prevailing at that time in Kashmir.

Referring to Exp. 109 E Beg Saheb submitted that this document did not contain anything which evidenced high treason. Assuming that Mariam was the code name of Begum Sheikh Mohd. Abdullah, can it be shown after going through its Alpha and Omega as to where and at what place violence, hatred or disaffection was preached!

Court: This letter has been produced only for comparing the handwriting of Begum Sahiba.

Prosecution: This has been produced as an evidence of the furtherance of conspiracy.

Beg Saheb: This letter 109E furnishes clear proof to contradict Prosecution story. Does this letter prove any illegal activity of Begum Sahiba? Is it in cryptic language? The language is so simple and clear that no identity has been concealed even of her own daughter Aziza Khalid or that of Sadrudding Mujahid, Ghulam Hasan Kanth and Mr. Panzu. Conspiracy cannot admit of so open and clear wording. Prosecution story falls to the ground. In this letter there is no mention of crime, violence or hatred. If a good Musalman is mentioned, the question is why does it pinch anybody? Kh. Ali Shah stated in his statement that they used to collect money for relief of 9th August sufferers. If this document is assumed to be of Begum Sahiba the probable and reasonable interpretation of this is that the donations were meant for relief but alas! in this regime such philanthropic activities were termed as high treason.

Elucidating Exp. 109G Beg Saheb submitted that this letter mentions the names of those for whom relief was meant. The Prosecution holds that this document was from Khalida, the daughter of Sheikh Saheb. This document only indicates that some money was sent for certain person who were in the prison so that their dependents could be looked after. Judicial notice of the facts should be taken that thousands were imprisoned and this lady was keen to do a deed of relief and public good. Had the civilized values been supreme in this country, Sheikh Ghulam Qadir would not have received gold medal but somebody else. Does this good act of helping destitutes mean conspiracy and over-throw of Government by violence? She does not touch politics. She wants a humanitarian comfort to the sufferers. It is on this evidence that our ladies, daughters and children have been branded as co-conspirators. Therefore daughter of the first citizen of Kashmir/dubbed as conspirator. This reveals the mind of the Prosecution.

Discussing Exp. 109C Beg Saheb stated that this again is alleged to be from Khalida. Prosecution itself refutes its own theory that code names were used. No intention to hide her identity can be attributed from this document and no inference as alleged by the prosecution can be drawn. In this letter there is nothing but desire that women should assemble by two or in small groups in Jama Masjid so that attempt to take out a procession should be made, to protest against the murder of democracy on 9th August. This even is not allowed. Brute force is used and it is drummed far and wide that the Govt. enjoys the mass support. It is submitted that even at present Government did not have 2 per cent of masses with them. Elaborating further he stated that as a true daughter of a father Khalida wanted to take out a peaceful procession. If this is high treason, can anyone then believe that fundamental rights are guaranteed here? Mr. Pathak was much more vocal to tell about freedom, and democracy. Mr. Beg asserted that the course of time it will be proved, who had created hatred against India. Sometimes it is felt that autocratic rule against which we had a death-defying struggle, was better than what we have now. This document never advocated violence but brazen-facedly the persons who are at the back of the prosecution produce it as an evidence for high treason and annexation of Kashmir by Pakistan. This act of trying to take out a procession is a crime in this country and therefore Mr. Pathak requested you to take the overall picture. Prosecution took five years to prepare this case and 3 years to assemble this flimsy and concocted evidence against the accused. This conspiracy as alleged is imaginary. The real conspiracy is theirs which took birth in the darkness of August 9, 1953 and which was hatched by the prosecutors themselves.

Referring to Exp. 109 E Beg Saheb submitted that this document did not contain anything which evidenced high treason. Assuming that Mariam was the code name of Begum Sheikh Mohd. Abdullah, can it be shown after going through its Alpha and Omega as to where and at what place violence, hatred or disaffection was preached!

Court: This letter has been produced only for comparing the handwriting of Begum Sahiba.

Prosecution: This has been produced as an evidence of the furtherance of conspiracy.

Beg Saheb: This letter 109E furnishes clear proof to contradict prosecution story. Does this letter prove any illegal activity of Begum Sahiba? Is it in cryptic language? The language is so simple and clear that no identity has been concealed even of her own daughter Aziza Khalida or that of Sadruddin Mujahid, Ghulam Hasan Kanth and Mr. Panzu. Conspiracy cannot admit of so open and clear wording. Prosecution story falls to the ground. In this letter there is no mention of crime, violence or hatred. If a good Musalman is mentioned, the question is why does it pinch anybody? Kh. Ali Shah stated in his statement that they used to collect money for relief of 9th August sufferers. If this document is assumed to be of Begum Sahiba the probable and reasonable interpretation of this is that the donations were meant for relief. Alas! in this regime such philanthropic activities were termed high treason.

Elucidating Exp. 109G Beg Saheb submitted that this letter mentions the names of those for whom relief was meant. The Prosecution holds that this document was from Khalida, the daughter of Sheikh Saheb. This document only indicates that some money was sent for certain persons who were in the prison so that their dependents could be looked after. Judicial notice of the facts should be taken that thousands were imprisoned and this lady was keen to do a deed of relief and public good. Had the civilized values been supreme in this country, Sheikh Ghulam Qadir would not have received gold medal but nobody else. Does this good act of helping destitutes mean conspiracy and over-throw of Government by violence? She does not touch politics. She wants a humanitarian comfort to the sufferers. It is on this evidence that our ladies, daughters and children have been branded co-conspirators. Therefore daughter of the first citizen of Jammu and Kashmir dubbed as conspirator. This reveals the mind of the Prosecution.

Discussing Exp. 109C Beg Saheb stated that this again is alleged to be from Khalida. Prosecution itself refutes its own theory that code names were used. No intention to hide her identity can be attributed from this document and no inference as alleged by the prosecution can be drawn. In this letter there is nothing but desire that women should assemble by two or in small groups in Jama Masjid so that attempt to take out a procession should be made, to protest against the murder of democracy on 9th August. This even is not allowed. Brute force is used. It is drummed far and wide that the Govt. enjoys the mass support. Beg Saheb submitted that even at present Government did not have 2 per cent support from masses with them. Elaborating further he stated that as a true daughter of a father Khalida wanted to take out a peaceful procession. This is high treason, can anyone then believe that fundamental rights are guaranteed here? Mr. Pathak was much more vocal to tell about freedom, and democracy. Mr. Beg asserted that the course of time it will be proved, who had created hatred against India. Sometimes it is that autocratic rule against which we had a death-defying struggle - was better than what we have now. This document never advocates violence but brazen-facedly the persons who are at the back of the prosecution produce it as an evidence for high treason and annexation of Jammu and Kashmir by Pakistan. This act of trying to take out a procession is a crime in this country and therefore Mr. Pathak requested you to see the overall picture. Prosecution took five years to prepare this and 3 years to assemble this flimsy and concocted evidence against the accused. This conspiracy as alleged is imaginary. The real conspiracy is theirs which took birth in the darkness of August 9, 1947 and which was hatched by the prosecutors themselves.

Referring to para 4 of the complaint Beg Sahab asserted there is no evidence emanating from these documents which had been produced to show that the relatives of Sheikh Sahab were occupied in a conspiracy to overthrow the government. Through/basically upon their own defence, yet Prosecution had helped them in proving their activities were legitimate.

Discussing a few documents of Exp161 series Beg Sahab started that Mohd. Siddiq Nausheri, PW 45 had said that these documents had been recovered from him. Some were in his handwriting and some were given to him by Begum Sahiba. Men may lie but circumstances may lie. This man is a Government servant and judicial authorities should be cautious when giving the credence to such personal statements. This PW states that he lost loyalty of Sheikh Sahab is clear animosity. Judicially such a man will be considered a traitor more-so when the prosecutor himself is his paymaster. In case of recovery of service stamps from him, he denied the authorship of these documents. He was discharged. The seizure list was produced in the same case. He became Government servant after the acquittal. Referring to Exp. 161 Beg Sahab stated that even though the poster states that it was issued from Amirakadal, it had been recovered from his house and was not in circulation.

So far as quotations "Sher-e-Kashmir Zindabad, Pakistan Zindabad, Abdullah Day, Bakshi Government Murdabad," are concerned, Beg Sahab stated that War Council was not in existence at all and this has been denied by the accused. Most of these things are manufactured. Discussing the line "Remember 9th January, Saturday, 4th February it was recovered from his house" Beg Sahab termed as a contradiction pure and simple. He stated that Sher-e-Kashmir Zindabad has been argued to mean that Sheikh Sahab should be restored to power. He asked whether Gandhiji Zindabad meant the same. This means a prayer for long life. Even worst enemies won't object to a slogan. More so, when it is known that Sheikh Sahab was the symbol of freedom struggle over here. Sheikh Ghulam Qadir had tagged Sher-e-Kashmir Zindabad and Pakistan Zindabad together only with the hope that it may help prosecution to connect the accused with Pakistan. It has been amply explained that they avoid use of such slogans. Had they been abusive against that country, they would have been termed patriots. This was because that there were persons who believed in War tactics in order to safeguard their interests. They alone did not want that India and Pakistan should have amicable relations with another. Plebiscite Front was for plebiscite. Therefore, they slogan was not used by them because that would mean giving a platform to that country and talking of plebiscite would become meaningless. The issue where to vote and not to vote was never prejudged but CIA had chosen to do so and therefore with Sher-e-Kashmir Zindabad they had tagged Pakistan Zindabad.

It was true that 9th day of every English month was observed as a mourning day or a protest day against the murder of democracy and its values on August 9, 1953. It was alleged that these celebrations gave a shaking to Bakshi Government but there is no mention of a resurrection. It only denotes that Bakshi Govt. was politically shaken and how could that mean high treason?

Court: Do you support from evidence that this was done by Beg Sahab: Sir, I draw inferences."

Referring to Sec. 349 of Penal Code Beg Sahab submitted that definition of the criminal force as given by the law was not at all evident from this document. This document Exp. 161 should be judged in terms of law. Bakshi Government may shake by observance of this and may even choose to go out of office but how could this be termed as a high treason? No recourse was taken to force or to arms. If peaceful demonstrations shake the government, how is that high treason?

Court: It may be inflated view of the writer himself.

Beg Sahab: Yes, I am thankful. Even then Expressing wish do not mean high treason. It is action alone that matters in law."

antras, prayers, dreams and processions do not mean violence unless supported by action. It is only use of criminal force that constitutes crime. Some-one may say on tuesday that Bakshi Government will collapse on wednesday. Will that mean high treason? In present time governments receive such shaking. This is the usual practice in democratic countries.

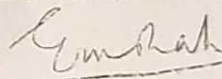
Commenting on the allegation of the firing crackers Beg Sahab stated that when Pt. Nehru Prime Minister of India visits Kashmir, crackers are fired and this action is never treated as high treason. In festivals and weddings such things happen. Nowhere have these been had so far. On 9th day of every English month Abdullah day was being observed and not the overthrow of the Bakshi government. The accused have no association whatsoever with words and slogans like Bakshi Government Murdabad. This action has been condemned outright by all the accused. Keeping in view the high public standing and education of the accused this goes beyond one's comprehension/such vulgar /that slogans would have been used by them. Assuming that this slogan was used yet its meaning does not constitute Judicial opinion demands careful consideration of its understanding. In modern times slogans of this type have become a usual practice of lodging protests against governments. Though being indecent yet there do not come even under the mischief of Security Rules.

Court: " Prosecution says that this is the first phase of the manifestation of conspiracy."

(The Court rose for the day.)

Issued by
Legal Defence Committee,
Jammu.

Forwarded _____ for
perusal of publication.


(G. I. Shah
Counsel and Secretary,
Legal Defence Committee.

OFFICE OF THE
LEGAL DEFENCE COMMITTEE,
THE DAWN CANAL ROAD,
JAMMU.

Tele= Insaf
Phone;
Brinagar= 707
Jammu. =5133

11th May, 1961.

2nd Day Proceedings
Resume of Defence arguments by Mr.M.A.Beg.

Resuming his arguments today Mr. Beg stated that in this series of documents dealt upon by him yesterday nothing was traceable which could constitute a crime u/s 121-A. The guiding factor being law under Penal Code and Security Rules, there was nothing to show that there was conspiracy whatsoever. He stated that even the statement of Ghulam Mustafa Mirchal, PW 72, did not prove anything that had been alleged by prosecution. All documents allegedly signed by Mariam, Khalida and Iqbal were solitary acts and did not show any concerted act as has been alleged. If direct evidence was lacking recourse would have to be taken to circumstantial evidence which must be of so compelling nature that it would irresistably lead to the guilt of accused. The alleged documents were nothing but philanthropic deeds which did not lead to that conclusion which prosecution has tried to arrive at. There was no concerted action, there was no intention to use force. Thus the story of conspiracy as alleged by the prosecution falls to the ground contented Beg.

Prosecution alleges that conspiracy took birth on 9th August 1953. It should be supported by positive proof. The Court will take that proof only into consideration. So these documents vis-a-vis this allegation are no proof of any kind to support the prosecution story.

Referring to Exp 161A, Mr. Beg said that the contents of this document only amounted to a protest of police atrocities on the respectable persons of Kashmir. The crux of this leaflet being that "respectable citizens of Kashmir are being repressed and harassed." No conclusion can be drawn from this sentence that force was meant to be used for over-throwing the Government. However it may critically comment on the American aid. The writer might have said that huge amounts are being obtained by India. Does that in any way indicate use of violence to over-throw Kashmir Government? That was no offence either u/s 121A or any other law. Here it was the duty of the judge to assess the truth and uphold the balance of justice according to the provisions of Penal law. Even respectable authors of India have not spared government of India for receiving American Aid and misfortune of this all was that Prosecution wants to prove by producing a document of teen-ager that the accused were in complicity with Pakistan. At the most it reveals that the writer has been very much harassed. The document might be derogatory about certain individuals but does that constitute a high treason?

Beg Sahab referred to the document Exp 161B and requested the

court to read a few lines from the statement of Mohd. Siddiq PW 45. Commenting on this he stated that it referred to some meeting of Mr. Renzoo and in parts it was derogatory to Sheikh Saheb's government viz. "It is not Abdullah Government that the people of this place will allow the capitalists to suck their blood. It is Bakshi Government where this thing cannot be tolerated." Coming further on it Mr. Beg stated that this whole was a surprising move that Begum Abdullah would publicize a document derogatory of her husband. This was nothing but a clear contradiction. Circumstances make it impossible to believe this fantastic story. If at all the document is assumed to be genuine then it was appreciative of Sheikh Saheb's government. However this document was not against any one, it make it a basis of high treason would be preposterous. The inferences thus were:

- 1) The said Prosecution witness contradicts himself.
- 2) Begum Saheba could not give such documents. The Prosecution witness has alone been taught to say that.

Coming to 161-C Mr. Beg stated that this document according to Mohd. Siddiq Nowsheri, PW 45 was from Begum Saheba (Begum Saheb Abdullah). All the ingredients of this document can only be read in a political sense. Mr. Beg pointed out that the document clearly stated that the writer or writers of these documents did not consider the raiders as their friends. The contents of this document reveal that the writer only thinks about politics and nothing else. Commenting "in 1947 Kashmiri Musalmans had fought the enemy" Mr. Beg stated that this totally refutes complicity with Pakistan. He submitted here was evidence from the document that alleged conspirators considered raiders and Pakistan as enemies. This whole cuts at the root of the allegation. This document was alleged to be from Begum Saheba and this should be noted that writer of this document branded Pakistan as enemy in 1947.

Court: As student of psychology there is every possibility of a former enemy turning into a friend later.

Mr. Beg: "It is unfortunate that it is your view for us that an enemy always an enemy."

Magistrate: "This is not my view. I am talking of psychology."

Sheikh Saheb: "We are not discussing psychology."

Referring to ExP 161-D, Mr. Beg pointed out that the contents related to two issues:

- (a) "What will be India's attitude towards Sher-e-Kashmir?"
- (b) "The present regime in the State is communist ridden and they want to over-throw Bakshi Government through secret conspiracy."

Commenting on this Mr. Beg stated that this was beyond one's comprehension as to how this all amounted to an offence? Mr. Beg asked as to where the shoe pinches? Does it in any way say to over-

the government? This document shows that it were the alleged conspirators who were worried that communists would over-throw the Bakshi Govt. It might be ~~bedd~~ ~~conspiracy~~ to the communists but the question was as to who has been offended and what crime has been proved by this document? However what was the message of writer - "wait with patience for future events." Mr. Beg asked whether that was the conspiracy to over-throw the government? This document neither proves any criminal intention or action against any government whatsoever.

Discussing the document Exp 161-E Mr. Beg high-lighted the following passage:

"There is a danger of awful war at anytime. This is the time of winter and we have to tolerate the repression of Bakshi Dogra. The police staff is uncivilized and mischievous and they harass people by entering into their houses. How does it pay Bakshi - Raishumari Zindaba

Commenting on this Beg Sahab said that the writer warns about dangers of horrible war. The writer neither likes it nor invites it. He indicated that this continued friction was a danger for this sub-continent and even the world. Can it be said that such a man wants to over-throw the government. If that were so what should be plight of authors who day in and day out refer to such dangers. The writer instead preaches fortitude and patience for the hardships of winter and excesses of Bakshi Government and condemns Special staff atrocities. Mr. Beg asked does this preaching of endurance constitute a crime? The writer also appeals to Bakshi Sahab as to what he will gain by all this molestation and repression etc. Mr. Beg asked as to what in this document was "even the remotest proof for the offences of overthrow of government, use of criminal force or conspiracy? Not an iota of such evidence,"

After finishing this series of documents Mr. Beg took up Exp 99 and he referred to its title "Continued effort" He stated that this was a leaflet which had been given to police by Shahbaz. Referring to the contents of various paragraphs in it he stated that this document shows the prevalence of police atrocities and also gives its instances and refers to the international support the plebiscite had received and in the end demands release of Sheikh Sahab. Should treason be attributed to a feeling or wish for peaceful settlement of Kashmir problem? Were not politics involved in the matter everybody would have been ashamed to produce such documents as proof of high treason. May it be asked as what are the guarantees of constitution and fundamental rights? If this state of affairs was allowed to continue then it means that we were living in a mediaval State. Those who deny these fundamental rights to us subvert the constitution themselves. This document cites the mistakes of police atrocities particularly on an ex-deputy minister M.R. Hamdani.

Court: Is it on record?

Mr. Beg: "Sir, what we want is that this state of affairs should which has humiliated men like Kh. Ali Shah, Mir Saheb, Chikkar Sa others at large."

Commenting further on this Mr. Beg requested the court that this document referred only to police atrocities, holding free plebiscite and release of Sheikh Saheb which in no way constitutes a crime as alleged by the prosecution. Rule of law would be Supreme in Kashmir only when Kashmir dispute was settled amicably and till then uncertainty, corruption, and denial of fundamental rights would be the order of the day in Kashmir. Mr. Beg stated for holding these views they were dubbed as conspirators.

Referring to Exp 101 entitled "Believers in Panch Sheel" Mr. Beg stated that here the writer tells Panditji that he had changed from his previous stand. This document emphasises plebiscite peaceful means of settlement of Kashmir dispute. There was nothing else that could be found. He says that bugle of liberty blown on the arrest of Sheikh Mohd. Abdullah on 9th August. It is that the termination of Bharti repression began on that day. That was the only sentence which prosecution high-lighted. How this constitute any crime or show of force or existence of conspiracy a pertinent question. This document, Beg Saheb, stated, clearly that on 9th August when Sheikh Saheb was arrested the termination of Indian repression began.

Court "Do you mean that before that there was repression?"

Mr. Beg: "Yes Sir, that is the meaning."

Further commenting on this document Beg Saheb quoting various parts from the document and asked that the demand made in this poster that the uncertainty should end and the decision should be according to the free-will of people and moreover it refers to wide spread police atrocities and lays emphasis on free choice of settling future of Kashmir. Beg Saheb stated that this writer might suggest independence of Kashmir and for that purpose Gopala Swamy Iyengar suggested this to the Security Council. Beg Saheb stated three things are obvious:

- (i) Universal support for plebiscite.
- (ii) Police atrocities.
- (iii) Termination of uncertainty that hangs over Kashmir like sword of Damocles.

None of these show that criminal force was used or overthrow of government was meant. Beg Saheb stated that instead this document supports the innocence of the accused and this document was in any way derogatory to Indian administration and did not oppose law that could be termed as high treason.

B R E A K

When the court assembled after break, Mr. Beg continued his arguments and stated that documents - Exp 161 etc. and other documents which had come from Shahbaz and Karnai required a little attention. About Exp 161 series it was admitted that these were not

circulated and the author was the Prosecution witness himself. The documents of Shahbaz and Karnai had been explained by Mr. Beg in his statement u/s Cr.P.C. The registers were presented to CIA and Prosecution Counsel linked the clandestine removal of the record of "Plebiscite Front" with the arrest of Zaman Paray. The argument was that most incriminating documents were removed. Mr. Beg requested the court to go through the registers produced there and point out a single sentence or word or entry which goes against law. Nothing from these registers proves that there was any conspiracy. The prosecution has termed this record as most damaging for the accused. This record contains scores of letter written by Plebiscite Front leaders to Indian authorities including Prime Minister and Home Minister. Moreover these registers contain entries about police atrocities. This was the positive proof from Prosecution itself that till 1957 Plebiscite Front was appealing to Indian authorities to intervene in the sad state of affairs here. Can any one imagine that persons who would have been against Government of India should have baseached for such intervention? If the accused would have anti-Indian feelings and belief in violence and over-throw of Government, their stand and methods would have been different. These witnesses according to their own version were accomplices and an accomplice ^{was} unworthy of credence. This was not independent evidence. The allegation that accused were affiliated with Pakistan had not been corroborated by any independent evidence. These facts did not prove or corroborated the crime. Corroborating of facts must connect the accused with the crime. Mr. Beg quoted law on this point. The evidence of these witnesses gave no corroboration of the prosecution story. Rule of prudence has matured into rule of law. Now that accomplice's evidence should always be corroborated by independent evidence. Their evidence was not corroborated at all and was not worthy of notice. This evidence did not corroborate contacts of the accused with Pakistan neither did they prove that there had been any conspiracy. The request that they should be treated as accomplices was made by him and other accused. The Prosecution did not touch this point at all and thus they have also accepted the request of the accused.

Mr. Beg then referred to the case law "Re vs Vaskar."

He then referred to the documents like pamphlets etc. alleged to have come from Pakistan and stated that according to Prosecution when conspiracy reached to its adult stage Ghulam Mustafa Mirchal, PW 72, comes in. Learned Counsel for Prosecution affirms that this P.W. was not an accomplice. Mr. Beg asserted that this man was an outright accomplice although he hob-nobbed with a certain officer for his own benefit. "Man of ^{suppression veri} is of no credit" This witness was not an ordinary man, who watched and detected. He was the man in the conspiracy. This was the man who according to his own statement was a link. Mr. Beg stated that but for him there would have been no conspiracy. A distinction has to be made between ordinary man and man

who continues to be in performance of this wrongful act for years. This PW continues to work with alleged conspirators, and keeps the conspiracy alive for years altogether. Ghulam Mustafa according to his statement takes letters and money to Srinagar and back to Pakistan. He was the indispensable link. Can he be termed a spy, a defector? In reality he was a creator. He circulates the literature. The question was who helped the circulation except Ghulam Mustafa. He committed and perpetrates an offence. He does not report it as he says. He was an active force in this alleged conspiracy. This was his independence. He had no consultations with Plebiscite Front worker. Can any one be hauled up for his acts. According to him he smells a cleavage in the ranks of Plebiscite Front. He offers Rs 10,000 five from his own pocket to Mr. Chikkan one of the accused imploring him to save the country from disaster and close up the ranks. But for him the conspiracy would not have advanced and very deservedly he should have been the accused No. 1. What have Sheikh Saheb and other accused contributed to this alleged conspiracy when looking into the deeds of this notorious man, is a pertinent question. Another general observation Mr. Beg pointed out was that some of the pamphlets referred to Kashmir accession issue which had been looming on for the last 14 years. Around Kashmir were situated world's three biggest countries. They had given additional importance to Kashmir and throughout the years statesmen had given their opinions and its solution had baffled them. Overwhelming feeling has been that the settlement should be by plebiscite and unanimous view was that this should be settled. The problem has been analysed as a permanent cause of friction between India and Pakistan and has been termed as oozing sore. If one of the accused uses this word, when same word is used by a statesman of Pakistan, does that mean that there was a conspiracy. This shows the animosity of prosecution. If 10 countries in Security Council thought that Plebiscite was best solution and Sheikh Saheb said the same thing it would be fantastic to say that they were in conspiracy. Same was the case so far the using expression 'oozing sore' was concerned. Would that mean by any chance that the author of those expressions was one and the same person. Panditji's expressions were common with the various expressions used by other statesmen of the world. This argument was most fallacious.

Referring to Exp 215/2 Mr. Beg stated that this pamphlet entitled "The stand of Plebiscite Front" says that world opinion had always supported the right of the Kashmiris people to decide their future by themselves. Mr. Beg stated that India herself offered to Pakistan that she would withdraw her troops. That was patriotic recently and now it has become treason. This was being a ground for slaughtering the accused. If this was being commented why should anyone be prosecuted. If Pakistan was an enemy why negotiate with her. Number of times that was done and more so on quantum of trade with much, does Mao Tse Tung negotiate/Chang Kai Shek. Here India

negotiates with a foreigner and if that thing was told today by a poor citizen he was told that gallows were for him. Accused did not claim any connection or association with the document under reference. What had been said or would be said was only a comment. Mr. Beg requested the court to see for himself the moderate tone used by the writer for bringing the hard realities to light under the sub-title "The stand of Plebiscite Front." Does the saying in this pamphlet that "we will not shrink from offering any sacrifices for achieving our birth right" preach violence and mean that the life of any other individual should be taken. It refers to the personal suffering which was often preached by Gandhi ji during the freedom struggle. This pamphlet has the quotation from Lord Mountbatten's reply to Maharaja and also has the White Paper of Govt. of India, 1948 and on page 6, Security Council's resolution. The question was to find out as to what did the writer say and continuing Mr. Beg stated that the writer emphasises that the decision should be through free plebiscite, Commenting on 'Roze Makafat'. Mr. Beg stated that it meant the day of reckoning. The day of reckoning in the democracy would be the day of vote when that would be cast in the ballot box. This document contains nothing incriminating. The writer quotes from Lord Mountbatten, Panditji and others and tells to M/s Bakshi and Sadiq that day of vote would be the day of reckoning for them.

Coming to Exp 215/1 entitled "Behind the Iron Curtain", Mr. Beg quoted a few passages and stated that the meaning of "a nation cannot be ^{exterminated}, the victory is of truth, the enemies of Kashmir wish to exterminate the people of Kashmir" contained in this pamphlet should be taken notice of. This was a general comment made by the writer on the historically proved facts and the question was that what kind of crime these denote. Was it a crime to wish for the end of uncertainty and sufferings into which numerous persons have been involved here and across the cease-fire-line," asked Mr. Beg. "Does this refer to India alone." Continuing further Mr. Beg told that this pamphlet referred to permit system which was recently in operation for entering in Kashmir.

Court: "Is it on record that permits were refusal on any ground?"

Mr. Beg: The very system supports it.

Referring to the letter of Shri Bushan to Pt. Nehru quoted by author in this pamphlet Mr. Beg commented that it did not amount to any crime and how this letter if reproduced in the pamphlet under discussion became incriminating? Whatever may be the case does this constitutes any crime. Even in the court the accused were threatened for publishing the court proceedings. This was also considered to be a treason. Mr. Beg commented that this letter was written by Mr. Bushan who had been engaged by Mr. Ashoka Mehta in a case in Srinagar wherein he had revealed to Panditji the sad state of affairs prevailing in Kashmir,

as seen by him. Mr. Bushan had frankly high-lighted the facts that the activities of Bakshi Ghulam Mohd. were entoto anti-Indian. Mr. Beg statdd that those who want to expose men who get money from government by filthy means and loot crores of rupees that come to the treasury by corrupt ways were being stifled by interested quarters and such evidence was produced here against ^{them} / to prove conspiracy.

Quoting a verse from Iqbal from the pamphlet, Mr. Beg stated that the interpretation given by Mr. Pathak on 'Zarba Kalim' was peculiar. In reality it meant force of argument. Maulana Azad was known as 'Abul Kalam' father of Rehtoric. Alama Iqbal had described the man even above the maker of destiny in his collection of verses known as 'Zarba Kalim'. Explaining 'zarbat-e-paiham' Mr. Beg stated that contineous effort and persuasion softens the granite heart of any ruler. Nothing was ^{that} incriminating in this verse and no violence was preached. This meant ^{that} contineous hammering by Plebiscite Front to have plebiscite would soften India for plebiscite. Would that mean treason and violence. If anything was condemned herein that was Bharti imperialism.

(The Court rose for the day)

Issued by
J&K LEGAL DEFENCE COMMITTEE
JAMMU.

Copy forwarded _____
For favour of perusal and publication.

G.M. Shah
G.M. Shah,
Secretary & Council,
Legal Defence Committee
Jammu.

Grams: INSAF.
Jammu 5133
Phone: Srinagar 707
New Delhi: 32202

The Dawn,
Canal Road,
Jammu.

3rd day Proceeding

Kashmir Conspiracy Case -Resume of Defence
arguments dated, 12th May, 1961.

Resuming his arguments Mirza Mohammed Afzal Beg stated, that yesterday he dealt with series Exp.245 and commented on 'Zarbi-Kaleem' a collection of verses of Allama Iqbal. That did not mean any physical blow but power of logic. 'Kaleem' means one who speaks. Nothing could be more preposterous than the meaning attributed by the Prosecution to it namely that Zarbi Kaleem means stroke of violence.

Referring to pamphlet Exp.215 Beg Sahib stated that this describes the horrors of terror regime prevailing in Kashmir. It states that Kh. Ali Shah, now an accused here, wrote to the Prime Minister of India about the atrocities being committed in Kashmir. Does that mean conspiring when Prime Minister of India and no one else was requested to intervene? The inference that the accused were in contact with Pakistan to overthrow the State Government would be most illogical.

The pamphlet also states that plebiscite demand has obtained World support. That does not make it in any way criminal.

Referring to Exp.215, entitled "Believers in Panch Sheel" Beg Sahib stated that the same demand for plebiscite was repeated in it. In fact plebiscite alone was peaceful method which excluded possibilities of friction, armed conflict and violence on this dispute. India gave that pledge to the people of the State and not Pakistan. India alone was, therefore, addressed. Can this be conspiracy with Pakistan?

Before commenting on Exp 215 caption "Murderous attack on Mirza Muhammed Afzal Beg" Beg Sahib recalled that once when he was driving to Srinagar a Govt. vehicle going towards Anantnag collided with his car and smashed it into bits. He had a miraculous escape. What happened to that case was not so far known. Public impression was that that was preplanned attack. This pamphlet presumeably refers to that accident.

Court: "What happened to that case?"

Mr. Beg: I do not know what happened. I know it was challaned but I was not called by the court. The driver remained always in the Government service. Now if somebody wrote about it and exploited the incident why to blame the accused for it? Referring to the last line of the pamphlet, "our urge for freedom will not be stopped by the death of Mirza Muhammed Afzal Beg and the time is coming when despotism will end", he asked as what was the offence in it. In fact end of despotism should be welcomed by all. At any rate this could not be termed as conspiracy. This pamphlet also states that plebiscite should take place so that

the uncertainty would end. He asked as to why where force or violence was used. This document emphasises that plebiscite demand should continuously be pressed for till the authorities like Sadiq and Bakhshi would bow before it. The greatest honour in a democratic country was to bow before public opinion. He asked has not Pt. Nehru to bow before the public opinion often in matters in which he holds contrary views e.g; the creation of Maharashtra State. There was nothing treasonable in all this.

Referring to the line, "Bakhshi Gulam Muhammed by taking recourse to repression was digging his own grave," Mr. Beg stated it denoted that people were complaining about the atrocities committed on them and these nefarious activities had estranged the ~~pe~~ people of Kashmir from India. So if one says that by estranging the people you are finishing yourself where is the offence. Best friends were not sychophants. Ashoka Mehta and Kameth were best friends of India who told the Prime Minister that conditions in Kashmir were ~~see~~ worse. So far as the accused were concerned they would always stick to the truth and tell the hard fact however bitter they might be. This pamphlet only mentions the repressive acts of the police. The question was, "should public men keep quiet." The writer only tells about these police atrocities about one Gulam Hussan Gilani who came from Khanayar, & the pamphlet points out that this man had become the terrorist agent inflicting torture on people over ~~here~~ there. Incidentally this Gilani has appeared as prosecution witness here. Mr. Beg further told the court that the pamphlet stated that the plebiscite should take place as soon as possible. Summing up Mr. Beg stated that there was not an iota of evidence in these series of documents remotely supporting the allegation of overthrow of Jammu and Kashmir Government or violence or incitement of communal hatred.

Taking up Exp. 215/18 Mr. Beg stated that this pamphlet as well deplored the repression. Nothing from this showed that there was a conspiracy with Pakistan. Explaining the meaning of 'Mutalibai - Huq-ki-taeed horahi hai...' Beg Sahib said that that does not mean any incriminating evidence. It means truth would be ~~ex~~ victorious. He asked was that a conspiracy.

Referring to 215/20 entitled "Manoeuvres of Pt. Nehru and pilgrimage to America," Mr. Beg stated that this pamphlet comments on the American Aid received by India. Somebody might express such opinion. That was his fundamental right. So many patriotic Indian criticised this action of the Government of India. This pamphlet as well had stressed for the holding of a free and impartial plebiscite. This view was held by every Kashmiri, and they stand by it. How would holding of that view be incriminating. In the end the pamphlet had appealed to agitate for achieving this right. "Agitation does not mean use of violence" contented Beg. Agitation was a democratic way of achieving public

Three.

demands. Of course it should not be violent and the pamphlet did not preach that. If things are not agitated then it is said that the things have now petrified. D.N.C and Praja Parishad continuously agitated and they were told that they were patriotic but when the accused agitated in the same way for asking to fulfil the promises they were dubbed as traitors and Praja Parishad even had burnt secretariate and had blackened the face of many tehsildars. Beg Sahib asked were they spared because they were Hindoos and can it be told as to who preached communalism. It is the other side and not the accused. Here in the jail for the last so many years we were told that Muslim servants would not be allowed. This was because they were not thought to be trust worthy. "Was 75 per cent of population then untrustworthy," asked Beg. As his honest and sincere well wishers of India they had advised that such attitudes would breed communalism but they were dubbed as communalists instead.

Mr. Beg referring to the Exp. 213/22 repeated the accused's disassociation with it. Presuming that not to be so he requested the court to point out any word which would show that there was any complicity with Pakistan. "Why is that past conveniently forgotten when Sheikh Muhammed Abdullah risked his life to save the Hindoos in riots," asked Beg. Now such pamphlets are produced against us," he exclaimed. These can be picked up from anywhere and produced against the accused.

Referring to the document Exp. 215/20 entitled "self delusion of Bakhshi Gulam Muhammed", Mr. Beg stated that this pamphlet had in it the assurance given by Sir B.N. Rao, to the Security Council on behalf of India on the accession issue, namely that people's vote and not consensly of Kashmir would decide the accession question. The writer indicated that in view of these assurances Bakhshi was self deluded when he claimed that accession of Kashmir was finalized. The writer had quoted Indian Government and had thought that the policy of the Govt. of India was supporting his stand. Does that show conspiracy? Pakistan was always indefinite about the self determination. India alone pledged herself with the people of Kashmir for plebiscite. The writer approvingly quotes ~~approbation~~ Indian authorities. That was not even defamation but approbation. No force or violence or conspiracy with Pakistan was evident from this document. The writer preaches to have trust in God which excluded faith in Gun-Cotton slabs etc.. That faith was amply demonstrated by Gandhiji. The pamphlet allegedly quoted Sheikh Sahib's letter in which ethical values of life were preached. Assuming that such letter had been from Sheikh Sahib what does it contain! Nothing more than to have trust in God. Beg Sahib asked was that any crime - could that constitute conspiracy.

Referring to the Exp. 215/16 Mr. Beg said that it had condemned the Sangh party which was outlawed in India.

Four.

Does it mean that nothing should be said about this darling. The document appreciates the foresight of Sheikh Muhammed Abdullah due to which the activities of Sangh Parity did not bear fruit in Kashmir. This was borne out by history. The accused have no association with it but still they asked does it tell anything about violence, force or overthrow of Govt. or against India? Mr. Beg also referred to Exp. 215/19, 215/17 and 215/16 and stated that though they had no association with these documents yet these also relate to the atrocities committed on the people of Kashmir and also assert that the faith of the people in self-determination was getting strong day by day. How can that mean use of force, violence or conspiracy by any stretch of imagination. Holding of such an opinion cannot be treason. This literature never postulated victory by war but victory by morals values. It quoted speeches of various Indian patriots. "Does that mean conspiracy against India?" asked Beg.

Referring to 215/30 Mr. Beg remarked that less said about Russia the better although she may give little aid but the younger brother has meanwhile marched in. This pamphlet had strongly criticised Russia. Beg asked whether that even was treason.

Referring to Exp. 215/7 entitled "New nets brought by old hunter", Beg Sahib stated that this pamphlet was very critical about Sheikh Sahib alleging that his actions had led to unhappy results. Now this even is attributed to us. No single word in it lent support to the allegations for which they were charged.

Quoting from Exp. 215/14 Mr. Beg stated that this pamphlet did not contain anything incriminating. It demanded the rights of civil liberties. It also referred to the illegal and unwarranted arrest of Sofi Mohammed Akber M.P while he had been coming to Kashmir on which Mr. Kameth M.P. had objected giving this as an instance of lawlessness in Indian Parliament. Beg Sahib asked whether this even could be called high treason and use of force to overthrow the State Government. Commenting on the passages condemning the ways in which elections had been held in Kashmir Mr. Beg stated that it trickles one to laughter to be told that these ideas expressed in these pamphlets were proof of treason.

Exp. 215/23 captioned "Voice of Kashmir" was alleged to be a copy of the letter allegedly sent by Sheikh Sahib to the Security Council Beg Sahib stated that this had never been proved as a fact here. "Someone wrote to somebody and that was alleged to be of Sheikh Sahib-" concluded Beg Sahib. Referring to its contents where the words 'oozing sore' occurred in this pamphlet, Beg Sahib said "Does this mean that whoever uses this term should be held for treason till eternity. Language cannot be a monopoly of any one person." So if Sheikh Sahib had in his application to High Court used this term - and it happens to have been used by some one also - where is the logic of connecting the two. Referring to Exp. 215/14 "True Secrets", Mr. Beg stated that he could not understand it, and therefore he could not say anything about it.

Court: You can read it.

Beg Sahib: Could you guide me whether there was anything about violence, Pakistan or anti Pakistan. (The Court did not answer)

Referring to ExP.215 Beg Sahib stated that it was D.N.C. people who had said this. Now why should they be caught on account of the saying of others. The contents might be disparaging or critical but there was no where in it mention^{ed} use of force, violence or contacts with Pakistan. Was this any proof.

Referring to ExP 215/9 Mr. Beg stated that this pamphlet entitled 'Hamagir Tehrik' showed nothing incriminating in it.

Referring to 215/10 'Activities of Plebiscite Front' Beg Sahib stated that it demanded plebiscite. Police atrocities had also been condemned. It was acknowledged in this pamphlet that India was sending crores of rupees but this huge aid went into the pockets of very few people. This had resulted in inflation, unemployment and corruption. Could this also be treason to say that there was mal administration. It is complained that the object for which this money was sent was not being achieved. "Can this be called treason," demanded Beg Sahib.

Referring to ExP 215/9 Mr. Beg stated that this pamphlet repeats the same story about plebiscite and also condemns the imposition of Rule 50, which was objected to in Parliament as well. This document asserts that truth succeeds in the end. Was not that a universally recognised matter. Why should any one object to the truth succeeding in the end unless he feels he was against it.

Summing up Mr. Beg stated that throughout these documents had hammered on the theme of plebiscite, they do not give any proof of use of force to over-throw the government. They speak of repression and earnestly request Government of India authorities for their removal. Mr. Beg asserted that it would be a law of jungle if the accused would be committed for trial on the basis of these documents. Though the accused had nothing to do with them and had not and could not be connected with them yet there was nothing in any one of them to prove that any one wanted to over-throw the government by force and annexe the State with Pakistan.

Referring to Ghulam Mustafa Mirchal, PW 72, Hardayal Singh and Man Mohan Singh, Beg Sahib quoted from Section 107 of Penal Code and stated that Mirchal is being abetted and instigated by Hardayal Singh and Man Mohan Singh to commit conspiratorial activities. Mirchal engaged a few more for doing these alleged things. He brings money and material and circulates them. He becomes an instrument of conspiracy. He employs a gang of 15 persons to execute this conspiracy and he gets the assistance of Hardayal Singh and Man Mohan Singh, who tell him to go ahead and get money and commit sabotage. "Under what law can two highly placed

Eight.

Mr. Beg : " Yes Sir, under law that will not be mine." Summing up Beg Sahib stated that even in these letters there was nothing to suggest the inference or proof that over-throw of Government was intended. At any rate a person alleged to be asking the Security Council to intervene cannot be deemed to be thinking of violence and treason at the same time. Mr. Beg asked, " Can from the contents of these letters with which they had no connection direct or indirect - be inferred that Sheikh Saheb and some Pakistanis conspired had to overthrow the Bakhshi Government - that is the allegation.

Referring to Exp. 25 Mr. Beg stated that its abnormal character makes it a fictitious and forged document on the face of it. According to the prosecution conspiracy had taken place on 9th August 1953. This letter openly mentions Mohiudin and Mirza Mohammed Afzal Beg in August 1955. This open mention of accused disproves the code list. Beg Sahib asked, " Is it not preposterous to infer that persons concerned in conspiracy for treason could have used open language"? Either these two persons mentioned therein were not Mohiudin and Mirza Mohammed Afzal Beg accused or if the reference is to them there was no conspiracy, as the very tone and contents of this document show.

Discussing Exp. 178 (alleged letter from some Pak. officer to the witness) Beg Sahib stated that this letter was signed by Khawaja and was dated September 26, 1955. Lot of evidence was available to show that these documents were forged. The greatest proof for that was their intrinsic absurdity. In this document all is openly mentioned viz. Sheri Kashmir, Begum Sheri Kashmir etc. Could in a conspiracy open language be used? Either this does not refer to the accused or if it is said so then Exp. 38 code list is proved to be a fabrication. The important fact was that letter did not indicate anything about over throwing of Kashmir Government by criminal force. There was nothing like 'Mahaz Azad Rai Shumari', as mentioned. The persons said to be in conspiracy with the accused do not even know the correct name of this organisation. The document talks about merger of Socialist party with Mahaz Azad Rai Shumari. This had no relation to realities. If prosecution want to tag this letter on the accused they have to hold that the Socialist party had become affiliated to the accused and hence they also are partners in the conspiracy. Any how there was nothing incriminating in it. The accused had no connection with it.

Coming to Exp. 197 (alleged letter from Pak. Officials to witness Mirchal) Beg Sahib stated that no confusion was possible so far identity of Sheri Kashmir was concerned. This document has no code name/it. Even Pencilline, Eggs are not used for money. Mirza Sahib and Khawaja Sahab have been openly referred to. It wants a specimen signature and a photograph also. There is no mention of design to annexe Kashmir with Pakistan as alleged. Looking on it apart from the defence side of the case. Mr. Beg

-nine-
or

asked, "Does it preach violence / use of force to over-throw Bakshi Government." He maintained that even man of ordinary prudence would not use this open language. What was this letter? The addressee is requested in 1957 to approach Mirza Afzal Beg and Kh. Ali Shah. He never does that. Yet this man has been produced as principal witness.- the same accomplice Mustafa.

Referring to Exp 200, wherein details of distribution of money were given. Mr. Beg stated that language was plain. Money was not named as pencilline. 'Zeenat' and 'Mariam' and 'Alif-Dal' were not mentioned for Begum Saheba and that letter was subscribed by Hamid code name of Sajawal Khan of Pakistan and the question was why this change abruptly? Did not this all refute prosecution story?

Referring to Exp 211 which mentions to engage a lawyer /Mr. Beg for Sheikh Saheb's case/stated that whatever was mentioned in this letter was neither in code nor in ambiguous language. Plain language had been used. Strange enough that after this conspiracy was disclosed, a letter comes in so plain language. Mr. Beg asked was it possible for a conspirator to write so openly and not to hide himself somewhere. Beg Saheb termed this document as forged like others and said that it was a post-conspiracy affair and was hence inadmissible, like many others of this sort.

Mr. Beg then referred to Exp 214 which has been alleged to be written to an officer at Hillan Agency. Beg Saheb stated there was no doubt about the addressee. The document came to Man Mohan Singh, PW.99 from some other source and he did not disclose the source. Law says that if any officer keeps any thing secret from the court he does it at risk of inference of adverse nature by the courts. The court may not compel an officer for this disclosure yet the law says that the risk would be of the person who refused to disclose. Had this officer disclosed the source at least the Agent of the enemy country would have been located. Why should he feel constrained to disclose the source of a letter from one Pak official to another particularly when he has been sending Mustafa Mirchal to meet Pak officials. Disclosing identity of Mustafa did not do his office any harm. Then this document was said to be of much earlier date and year. These infirmities apart, this document was a contradiction in terms. At the beginning it tells the addressee to destroy the the record lest he be caught but then it mentions the sabotage activities. There can be no other fantastic story than this on which prosecution has depended so much. Mr. Beg termed this document and others as 'intrinsically' absurd. Prosecution only wants a political judgement on these lines. It should be taken note of that Kashmir was under observation of all powers. UN observers were stationed here. Can it be believed that

Pakistan officer would write such fantastic letters. Nothing but grossest fabrication of the prosecution was exposed by this letter. The addressee is asked to give all help and information about sabotage, arrange many a parties and gangs. If all this is not possible go himself and at public places and spots where people throng explode bombs, so that the purpose and effect would be to scare away the visitors. How fantastic! Beg Saheb further referred to document Exp 202 and stated that it was plain languageed document.

(The Court rose for the day)

Issued by
J & K LEGAL DEFENCE COMMITTEE,

Copy forwarded to _____
for favour of perusal and publication.


SECRETARY AND COUNCIL
J&K LEGAL DEFENCE COMMITTEE.

E R R A T A

Please read	Page	Line	For
Had	5	16	were.
Man	6	3	mistake.
Profusely		41	properly.

.....

Grams: 'INSAF'
phone: Sgr. 707.
Jammu. 5133.

N. Delhi:32202

+++++ ++++++

The Dawn,
Canal Road,
Jammu.

THE KASHMIR CONSPIRACY CASE.

Resume of Defence arguments 13th May, 1961.

Resuming his arguments today Mr. Mohammed Afzal Beg referred to document 214 and stated that he explained yesterday that the very contents contradict the Prosecution story and also that codes were used for secrecy. He referred to Sec. 114 of the Evidence Act and stated that human conduct and common course of natural events has to be kept in view and then certain judicial conclusions are to be made. The behaviour when sad news of death are to be heard would be sad. If the behaviour would be different then it would be abnormality. Looking, therefore, at Exp. 214 we have an intelligence officer of Pakistan who negotiates for sabotage with another Pakistan Officer a secret of tremendous nature. Add to

this the international importance the Kashmir Question has achieved. In such a case care and caution would highly be needed. According to the contents of the letter it seems that alarm has rung and something has been leaked out when this officer advises him to destroy all the traces of any record. Normally they should now remain cautious. But in the latter part of this very document he lays out programme of espionage and sabotage. This was all abnormal behaviour and can this fantastic fabrication of the prosecution be believed. The document, Mr. Beg affirmed, was a faked document and it was an attempt to link the accused with violence. The dual object was to condemn Pakistan internationally and wriggle out from previous commitments and also to condemn the accused. Man Mohan Singh took recourse to sections 123 and 124 of the Evidence Act only to cover this fabrication. Man Mohan Singh P.W. says that this letter was intercepted, therefore, it did not reach the destination. The Conspiracy was killed. Sum and substance of the letter was that visitors might be scared and the object by no means was to overthrow the Government.

Dealing with Exp. 95, 96 and 97 which pertain to the recovery memo, Beg Sahib made a reference to his statement u/s 342 and also read over 1953 Supreme Court judgement. Mr. Beg stated that under this judgement statement of an accused under section 342 Cr.P.C could be considered as evidence and was most important matter for consideration. Quoting from the judgement, Beg Sahib stated that their Lordship's have given much importance to the statement of accused for judging a case.

Referring to his replies given to question 40, 41 etc Mr. Beg quoted some passages and stated that reasons were given therein as to why Attaullah approver fell in line with the police.

and the
 Story of recoveries etc was a sheer concoction. / letter Exp.96
 was not recovered from his person, stated Mr. Beg. It contradicts
 the story of the code lists because in that list he (Mr. Beg)
 was never referred as 'Aqai-Dar-ul-Islam'. There was no
 corroboration from any other document or evidence that this
 letter was addressed to him. Mr. Beg, referring to the charge
 that they wanted to overthrow the Government by force, stated
 that not a word of such purport was to be found from this letter.
 It talked about the reaction of the proclamation of the Prime
 Minister of Pakistan. Were that a first step of conspiracy
 prosecution should have produced that. It also wanted to
 know the reaction of the people about the proclamation
 and also what was their wish about the accession to Pakistan
 which would be subject to the wish of the people. Mr. Beg said that
 that was an agreement with United Nations and when this procla-
 mation was made he was in the jail. Mr. Beg asked, other things
 apart did the contents preach violence, espionage or overthrow
 of Kashmir Government? Actually the decision to settle this
 Kashmir Question was not a new thing but had been accepted from
 1947. Mr. Beg affirmed that this would have been funny for the
 Prime Minister of Pakistan to pose that question, more so when
 he knew the stand of the leadership of Kashmir that people alone
 would decide their future. Mr. Beg further stated that there was
 no evidence of the fact that any person was sent subsequent
 to this letter for seeking advice etc.

Mr. Beg then referred to Exp.97 and highlighted 'Haji
 Khuda Bux' which meant approver Attaullah Beg. His address
 exhibit was Srinagar and actually he belongs to Chandoosa,
 Gilmarg.

Court: It is not Srinagar but salam.

Mr. Beg showed the document to the court in which Srinagar was
 clearly written. Further elucidating this exhibit Mr. Beg stated
 that this approver knowing that he was committing a crime was
 carrying proof about it on his own person. He referred to
 some other scriblings and affirmed that those were latter
 additions in order to link them up with other stories of the
 prosecution. Mr. Beg stated that in this category of documents
 alleged to have come from Pakistan there was no evidence about
 the use of force and overthrow of Government. No offence much
 less high treason against the State Government had been preached.
 As a committing court, Mr. Beg submitted, the court had to see if
 these letters support any kind of criminal activity as has been
 alleged. Mr. Beg asserted that the thesis sought to be built on
 214 thus falls through.

Mr. Beg submitted that not even one document proves that
 there was any object of using force or overthrowing Kashmir
 Government.

Mr. Beg then referred to the documents alleged to have

been written to Pakistan. He referred to Exp. 11 alleged to be written by Begum Sahiba to Khawaja Firm and stated that the proof of handwriting was almost nil and so far cryptic language as alleged by the prosecution, was concerned was obviously meaning less. The language used was fantastic and a lady of high stature as she was could not choose such a language. Secret language compatible with circumstances can alone be explained. Mr. Beg denied this letter and its contents. Mr. Beg stated that the circumstances leading to its recovery were most dubious. Prosecution witness Attaullah of Thindum was actually under arrest at the time of recovery. He secured his release after giving an apology and such a man could always oblige the Government more so when he was secured from prosecution. He secured his release in a dubious way. Prime Minister of Kashmir visits the jail and releases him without consulting the judicial board. He even referred to have made trips to Pakistan and yet he had not been made accused. He was an accomplice and his evidence suffers a very great infirmity. Moreover, this prosecution witness deposed in the court that the alleged letter shown to him was not of Begum Sahiba. Later on he tried to water it down due to the presence of many a police officers within in this court and without the State who are directly in charge of this Case.

Mr. Beg then referred to the document 325 and stated that the Complainant Mr. Mehra had recommended to the Government to sanction the prosecution of peer Attaullah under Sec. 121-A. Bakhshi Gulam Muhammed did not agree. He had gone to the Central Jail and released him under his inherent powers. That was so only to give a concocted statement against Begum Sahiba, only with the purpose of character assassination, otherwise this smuggler should not have obtained such an immunity. His statement, Mr. Beg affirmed was worthless. Mr. Beg submitted that in Exp. 11 there was not one word direct or indirect to show that there was a conspiracy to overthrow Kashmir Government by violence or use of force.

Mr. Beg then took up Exp. 235 alleged to be a letter by Iqbal to Rafiqi. Mr. Beg stated that this was a type-written, undated, and unsigned document without any mention of the place. The only evidence about its source was P.W. Mirchal. This document, Beg Sahib again affirmed, was inadmissible. Referring to para 2 Mr. Beg stated that the name of Zaman Parrey was given in open language and no code name had been used. The question was whether Mr. Chiken a man of very high calibre and understanding who was alleged to have written this letter would have used names of Mirza Gulam Qadir Beg, Zaman Parrey etc. in so open a language giving full particulars of their addresses and places. Mr. Beg further told the court that he does not even use code name for money in his letter and he was one of important conspirators as alleged.

Without going into details the prosecution story was totally wrong and that letter a faked one. Such documents were too general and therefore, proves that these were concocted. Mr. Beg asserted that apart from this all not a single word was contained in the document which tells about the use of force, or violence or over-throw of the government. Mr. Beg then referred to a line from this EXP which reads that "all his letters will bear marks 456 on the left top corner of the last / in future and Mr. Beg here submitted to the court that photostat copies police supplied to the court did not have these markings. Mr. Beg stated also that no code names had been used for Sofi Mohammed Akber in this letter. Mr. Beg then pointed out that were there a conspiracy then vagueness about the collaborator would not have been evident from this letter as was obvious from the term "some Nazir"

Summing up he stated that there were no code names used, there was no evidence to prove the ingredients of section 121-a and he denied all connections direct or indirect with this letter.

After the break.

.....
Elucidating this point further Mr. Beg said that these marks were for genuineness of the letters and no letter at all bears that mark which shows that no letter was genuine according to the test given by the prosecution itself. There was no evidence about this at all. This was said that this number alone would always be in ink and that being so, Mr. Beg asked was not that fatal for the prosecution, when no letter bears these marks.

Mr. Beg then referred to 22 series alleged to be letters from some accused to Pakistan officials and pointing out 22/d he stated that this was a single document alleged to be written by Beg himself to some Pakistan officer Sajawal Khan. Mr. Beg again extended an invitation to M/s Bakshi and Sadiq and Qasim to depose that it was in his handwriting.

Court. "You did not refer to Mr. Qasim in your statement 342."

Mr. Beg. "He was not then a Minister."
Mr. Beg stated that if these can depose on oath that that was his handwriting he was prepared to undergo any punishment. Instead these witnesses were produced for identification of his handwriting who were not remotely connected with him. Can this letter be thus proved on the identification of such witnesses asked Mr. Beg. Referring to Sajawal Khan's letter/Mr. Beg stated that this letter was a mere concoction and a very awkward fabrication. Mr. Beg stated that knowing law and the consequences of crime etc, could it be believed that he could write such irresponsible things more so when he held high posts in this very State. Mr. Beg asserted that this letter was a handy work of some one who has

been indulging in forgeries fortunately without common sense. Does the context necessitate such open things for conspirators which would directly involve them in a criminal offence. Further Mr. Beg stated that the letter was written on 14th April 1957 and if that was the position then that would mean that he met him in previous August 1956, when he (Mr. Beg) was in jail. He further said that there were inherent contradictions in it viz. code name was not used for Sajjawal Khan, Kh. Ali Shah and Haji Mohammed Ishaq. If at all accused were engaged in conspiracy as alleged then they would have used code names. This therefore, was a forgery because a forger does not want to take risk. If at all this alleged letter was accepted as true, Mr. Beg asked as to where did it preach use of force, violence and overthrow of the government. The whole letter denotes that the persons concerned were talking about something else. Mr. Beg submitted that the Court should take all this into consideration when judging them. He repeated that this letter was forged and he and the other accused had no connection with Pakistan. He termed the searches as faked. He requested the court to note that these letters were recovered from Zaman Parrey an approver and thus an Agent of Police. These two darlings of Police, Attaullah Beg and Zaman Parrey had revealed everything to the Police within three days after their arrest. In spite of that Attaullah Beg was at large from the 1st day said Mr. Beg. No recognizance bond and no undertaking were taken from him. He was not kept under surveillance for years altogether during which he made 30 trips to Pakistan. Mr. Beg asked if that could be believeable? No explanation was offered by the police Officer who were cross examined on this extra-ordinary conduct. Mr. Beg pointed out to note that Sheikh Ghulam Qadir was notorious for his third degree methods. Why such a lenient view was taken in this matter was a pertinent question. This Attaullah Beg was arrested in Chandoosa and instead of going to nearest Police Station he was taken to a private house of Sardar Balwant Singh only for this that this court was told that he was never in Police custody. This tells once again about the extra-ordinary conduct. He writes a petition of pardon and being illiterate quotes the correct section of law in his petition. Later Zaman Parrey also comes and both write the petitions. Attaullah's son off and on gets meals and smuggles ink and paper etc. and the Police on duty knows nothing about it. Zaman Parrey acts in the same way and comments made about Attaullah Beg apply to him as well. It was obvious from all this that under torture and bribes they made the confessions. Mr. Beg brought to the notice of the Court the murder case in which Attaullah Beg was also involved. Mr. Beg stated that EXP 95 was the recovery memo of Attaullah arrest. Sardar Amerjeet Singh was an omnipresent dignitary on the arrests of Zaman Parrey, Attaullah Beg, Ghulam Hassan Kanth and scores of others. On every occasions he was present

and such a witness was produced to corroborate these recoveries and same was the case of PW Mohammed Sultan of Gaw-Kadal. Both were members of the national conference and their enmity was well established. Mr. Beg then pointed out that no Urdu standard writing of him to prove his handwriting from various offices which were working under when he ^{was} Revenue Minister were produced. This was so because that would have further exposed the Prosecution story.

Referring to Exp 22/ E and 22/F Mr. Beg requested the Court to note the broad improbabilities. He stated that Ghulam Qadir Beg uses the same cover cloth which was used by some one in Pakistan. That was systematic only to link the accused with Pakistan. Were it so every trace would have been destroyed by the accused. He affirmed that they had no direct or indirect affiliation with Pakistan and stated that this series did not provide any remotest evidence to prove that force or violence was meant to overthrow the government.

He requested the court to scrutinize each of the documents in this series and see for himself whether there has been any mention made by Begum Sahiba or accused direct or indirect for overthrow of (1) Kashmir Government, (2) using force (3) creating communal disturbance and hatred and (4) annexing Kashmir with Pakistan.

Mr. Beg referring to the alleged letters passed inter se the accused and took up 85, 89, 33, 34, 36, 80, 81, 82, 83, 84 and stated that the allegation was that these were smuggled in or out of jail. Referring to PW 122 Parmanand he stated that the was produced by prosecution to tell that he used to carry letters from jail. He was continues to be a government servant. After confession before the Police he was transferred to Medical Department. Mr. Beg pointed out that after abetting an offence he was just transferred and thereafter got a job in Irrigation Department and later took up a tuition in some Military Officers house.

This all proves that his story was a clean and clear fabrication. Second point Mr. Beg highlighted about him was that they who were alleged to be trying to annexe Kashmir with Pakistan employ Parmanand to help them in this annexation. Could any Hindu asked Mr. Beg oblige them for that. That was preposterous more so when their relatives used to come to them off and on as alleged by prosecution. Beg Sahib asked why should they depend upon Parmanand instead of their own kith and kin. What a fantastic story! Mr. Beg said that Parmanand was an accomplice and was not corroborated by any evidence and this was unworthy of any credit. The common factor of the documents Mr. Beg Stated was that these were allegedly seized out of the jail, some 100 miles away and after years altogether. The fact that these were taken in and out of jail and not detected and seized should be noted. That was highly impossible

more so when these documents were alleged to be connected with high treason. How strange it was that he had preserved them as his office copy when the offence would have been so serious.

He stated that Bhandoji was in jail for years with them. He asked was it possible to hatch a conspiracy in his presence for annexing the State with Pakistan.

Mr. Beg referred to his answers given to question 5 in his statement u/s 342 and quoted its contents viz. there was a small kitchen near the house in which Sheikh Saheb was living and which was under continuous surveillance of Central Reserve Police. Commenting on it, Mr. Beg stated that this house was strictly guarded and PWS Dr. Osawal, and Sheikh Ferozdin and other Superintendent of the jail corroborated this. Mr. Beg submitted that they were provided with one kitchen and jail was guarded by double guard of the C.R.P. armed to the teeth and no population around /civil the jail was allowed to move. Mr. Beg asserted that jail servants were the informers of the government and asked could this be believed that under such circumstances they could hatch a conspiracy. He said that half wits might do that. Mr. Ferozdin PW admitted that the controlling key was with the commandant of C.R.P. who could visit the jail at his own discretion. These circumstances lead to the conclusion that clandestine activities within the jail were impossible.

Mr. Beg then referred to the jail register of Kud jail and pointed out the register was maintained at the gate of the Kud jail. Producing 32 entries from the register Mr. Beg pointed out that all their relatives were searched before coming in or going out of the jail and also any detenu on transfer or release was ruthlessly searched and in searches no exemption of females and children was made. He affirmed that this was borne out by the government record attested by the commandant of C.R.P. He then referred to entries one by one to and quoted the following:-

- 111-a/3. "Tariqs visit - his luggage was searched."
- 111-A/4 "Sheikh Sahib was handed over to Commandant Bhawani Singh."
- 111-A/5 "Their boxes have been searched and they do not contain any objectionable thing."
- page 51.15.11.54. "On the release of Kh. Ali Shah his bedding was searched. Ghulam Qadir Beg and Mohd. Yaqoob Beg interviewed under the supervision of Superintendent."
- Page 52.14.11.54. "Searched, found letters and censored them."
- 29.11.54.111-a/8. Mr. Beg transferred to Srinagar and searched."
- Page 61.18.2.55. "Yaqoob Beg interviewed under the supervision of the Superintendent."
- Page 71. 111 A/13. "Release of Ghulam Mohd. Shah and Ghulam Mohd. Beg detainees shall be searched."

Court. How long this series will take you?

Mr. Beg. About ten minutes.

(The Court rose for the day.)

Copy forwarded to
FOR perusal and publication

SECRETARY AND JAWAHARLAL NEHRU UNIVERSITY

Issued by
J&K LEGAL DEFENCE COMMITTEE.

(Telegrams : INSAP)

ALL JAMMU AND LEGAL DEFENCE COMMITTEE

Sgr. 707
Phone: Jammu. 5133.
Delhi. 32202.

SRINAGAR-KASHMIR

Branches:-
(1) 81/48, Diplomatic
Enclave,
New Delhi.
(2) The Dawn, Canal
Road,
Jammu.

THE KASHMIR CONSPIRACY CASE

Resume of Mirza Mohammed Afzal Beg's arguments.

Continuing his arguments Mr. Beg today referred to the following entries of the jail register and stated that these entries conclusively show that all entrants male or female were searched thoroughly:

Page 72. Exp. 111A/15 dated 5.5.55. 'Mr. Amin's party came to interview him on 5 May, 1955. This party was searched.' Exp. 111 A/16. 'Interview of Mr. Amin by Ghulam Mohiudin. Interviewer was left out after search.'
Page 72. " Sheikh Nazir and others were let in after search of person and vegetables."
Page 77. 15th May, " Farooq and others came in and their beds too were searched by CRP."
June 20th, 1955, " Farooq came for the interview and he was searched by the CRP."
Page 78, " Tariq is searched by the CRP."
Page 80. 24.7.55, " Mr. Mohan Bandhu comes for interview is searched. He goes back after search."
Page 81. 29.7.55, " Mr. Abdul Rashid comes and is searched by CRP. " On his exit he is searched."
Dec 3, 55. " Mr. Hissamudin's family including ladies comes to see him. Necessary search by CRP."
Page 113. 15.5.58, " Mr. Mohiudin Shah and Mr. Yaqoob Beg were allowed entry after search. " They were let out after search."
Page 117. 11.6.56, " Mirza Gulam Mohd Beg and Beg's children searched."
June 18, 56, " Mr. G.M. Beg and Mr. Beg's children let out after search."
May 14, 56, " Farooq and others, were searched."
2.7.56, " Farooq and others let out after search."
30.7.56, " Sheikh Abdul Rashid and children of Beg Sahib were searched."
5.8.56, " The party goes out after proper search."
Page 131, 7.9.56, " Mirza Gulam Qadir Beg, Mrs Beg and others were searched 'except' Mrs. Beg. " Mr. Beg stated that the word 'except Mrs Beg' was a forgery and a clear over-writing. The alignment and spacing show that it was a clear forgery. Presumably that was done when the documents came into the hands of the police. Sheikh Sahib knows that on his release on January 8, 1958 all documents of jail were taken over by Police. Requesting the Court to turn over to the entry dated 17th Oct, 1956 he stated that the entry shows that on that day Mrs. Beg and party leaves the jail and they were searched. No exemption was made at this time. This clearly proves that word 'except Mrs. Beg' was a forgery.
Page 132, " Gulam Qadir goes out of the jail and he is searched."
Oct. 19, 56, " Mr. M.A. Beg was released and searched. " Mr. Beg commented that actually he was released on 21st Oct, 1956. Whatever worn clothes he had there were searched as explained by Sheikh Ferozdin, Superintendent of jail as P.W. in this case.
Page 177. 17.10.56, " Begum Sahiba, Mrs Shah, Mr. Nazir etc. The Party was searched. " Mr. Beg submitted that there was an over-writing also.
Page 139. 10.11.57, " Begum Sahiba and party let out after search. " Some new words have been over-written and some have been changed and the tampering was.....

clear affirmed Beg Sahib.
 Page 157.11.5.57, "Mr. Jalaludin Shah allowed in after search."
 Page 158.20.5.57, "Mr. Jalgludin goes out after search."
 Page 158.20.5.57, "Pir Abdul Gani released and properly searched." Beg Sahib submitted that this entry was very important and Mr. Abdul Gani accused in this case was also searched on release and thus all stories connected by prosecution about him fall to the ground.
 "Farooq and others were searched on going in jail."
 "Farooq let out after search."
 28.9.57, "Sheikh Abdul Majeed searched." Discussing these entries further Mr. Beg submitted that following conclusions were clear:
 (i) All entrants going in and coming out were searched. (2) No exemption was made about ladies minors. (3) Detenus were duly searched at the time entry or release. (4) These entries relating to year 54, 55, and 57 conclusively show that search was conducted by jail staff and the CRP together.

Dr. Oswal tried to secure exemption in case of Begum Sahiba Sheikh Muhammed Abdullah in 1957 and that shows that till then no exemption was made in her case. Searches were done thoroughly as was evident from the record. In this case the prosecution dares to ask to brush aside this record. They say, "We have maintained it and this is wrong." The presumption was that at the time of making these entries the officers had not the mind of prosecution before them. All variations oral and otherwise made have been done to help the prosecution and thus the prosecution story should be disregarded.

Mr. Beg referring to the alleged documents that went in or out of the jail submitted that that was highly impossible as shown by the very record of the jail. No document was recovered in the jail. Such documents if they would be in connection with a high treason could never be preserved. Their place would have been the fire place. Mr. Beg affirmed that these documents were seen by the accused first in the court. He disassociated himself and the accused with any connection direct or indirect with these documents.

Mr. Beg submitted that prosecution thesis was irrational and their conclusions illogical. He referred to Exp. 85 and requested the court to take a view of the fact that one conspirator writes to other conspirators as was alleged to over-throw the Govt. and annexe Kashmir with Pakistan.

He quoted from the document, in which the names of Sher-i-Kashmir, Farooq, Madri-Meharban were written in open language. Mr. Beg stated that not a word from this document tell about force, use of force or overthrow of Government. If this alleged letter be presumed correct, Mr. Beg stated that this letter has nothing which can be termed secret or which does preach any offence against the State. To infer anything of conspiracy from a letter wherein the behaviour of workers was mentioned was fantastic. Even Congress had its own secrets as an organisation. Mr. Beg stated that Plebiat Front announced sometimes dates of public meetings and these were

banned at once. He requested the court to take note of the third degree methods of Shri Ghulam Qadir Ganderbali when public meetings even were not possible. Often letters and telegrams to Pt. Jawaharlal Nehru were pinched off. If there was an estrangement of feeling about India the responsibility was that of CIA and other such like agencies. The presumption under such circumstances would be that the author who ever he may be wanted to keep such like things viz. (1) holding of public meeting etc. secret. It can never by any stretch of imagination deduced that secret about high treason was meant. Mr. Beg affirmed that for mere assumption no one is prosecuted or punished. He referred to the convention at Bhaderwah where Kh. Ali Shah had to go. Before reaching that place, he was arrested. Beg Sahib asked should not such things be guarded by an organisation where there was no rule of law in existence.

Referring to the third paragraph of this document Mr. Beg stated that this tells about poster and dictators. That was a civil resistance as taught by Gandhiji. Mr. Beg then referred to P.W. Ghulam Mohd. Butt who had given a vivid picture of these things. Mr. Beg asked did these posters preach violence, use of force or overthrow of Kashmir Government. It tells about the atrocities and arrests to which people or sympathisers of Plebiscite Front organisation were subjected for peaceful demonstrations.

Referring to sentence, "Goggas have not been able to maintain their shala jamadari," Mr. Beg said that he does not know who the goggas were, and nor have the prosecution told anything about them. If Gogga was an imaginary fellow, Mr. Beg asked was then it a high treason if an imaginary figure was mentioned. The document stated Mr. Beg tells that a 'Gogga cannot walk without a permit of the Plebiscite Front,' does not mean that it has been impossible for the Government to function. Mr. Beg affirmed that the prosecution evidence itself, it was obvious that the ruling party have lost all respect amongst the people because Mahatma, Panditjee, J.P and Sheri Kashmir always told the people of the Kashmir that they were the final arbiters of their fate and much more when the accession had to be decided. When this very right was being denied the position as to why they lost the respect of people and used repressive measures becomes clear. It therefore was not the violence that these imaginary Goggas fear but the hatred people had towards them. No force or violence was taken recourse to and contrary to that Mr. Beg asserted that there was ample evidence to show that it was the people who were harassed and repressed. This document fortells about the cleavage in the ruling party stated Mr. Beg and told the court that that clearly shows that this was a forged one because such person alone could mention about the cleavage who would have been closely connected with the ruling party.

Summing up Mr. Beg stated that this document does not tell anything about force, use of force and over-throw of government as it has emanated from the Prosecution itself. He affirmed his and Mr. Amin's stand of having no connection with it direct or indirect. Taking up document/alleged to be a letter of Mr. Amin and /Exp.89, Mr. Beg disassociated himself and Kh. Ali Shah accused, other accused from any connection with this document. Commenting on the reference made in it about Lakhanpal and cutting of the Dargah, Mr. Beg stated that even an iota of objectionable material was not evident from this document.

Mr. Beg referring to opening sentences of para first of the document stated, that according to it the prosecution itself proves that the Plebiscite Front was not an outcome of underground war council. This document says that people have disowned Bakshi and not Sheikh Sahib. Not a word which was criminal was contained in this document. Mr. Beg pointed out that it was alleged that Mr. Amin brought about the war Council and later on it changed into Plebiscite Front but here in this alleged letter Mr. Amin tells that Mr. Beg and Kh. Ali Shah brought Plebiscite Front into being and thus it follows that (1) The object was not overthrow of the government. (2) Plebiscite Front was not the continuation of the war council. (3) The aims and objects of the Plebiscite Front were legitimate. (4) Mr. Beg and Kh. Ali Shah brought Plebiscite Front into being; (5) that the pledges given to the people be honoured. / any This was not in any way treasonable asserted Mr. Beg. Mr. Beg requested the court to concentrate on the sentence, that, "masses rallied round the banner set up by Mr. Beg to show that the people are behind Sheikh Sahib," and said that does not mean preaching of violence or use of force or overthrow of a Govt.

Elucidating the contents not to divulge the name of Sheikh Sahib about his affiliation with Plebiscite Front, Mr. Beg stated that logically it did not mean that Sheikh Sahib was involved in the formation of Plebiscite Front. One may say that the Sun does not shine will not mean that Sun was not there. Mr. Beg asserted that this allegation was factually correct because he could not bring Sheikh Sahib into Plebiscite Front when he was in jail. Referring to the expression in this letter "why Sheikh Sahib's name has been dragged in Plebiscite Front" Mr. Beg submitted that it was the intrinsic evidence produced itself by the Prosecution that Sheikh Sahib had nothing to do with the Plebiscite Front organisation.

Summing up this letter alleged to be from Mr. Amin Mr. Beg stated that not a word direct or indirect supports the ingredients of section 121-A and it talks about peaceful means adopted by the Plebiscite Front and also tells about the peaceful programme intended to be adopted by Plebiscite Front. Mr. Beg asserted,

that for (1) restoration of Rule of law and; (2) achieving right of self-determination of the people.

AFTER THE BREAK.

Resuming his arguments Mr. Beg referred to resignation statement submitted in the court by Mr. Amin on his examination u/s 342. Mr. Beg termed it as an innocuous document and said that unfortunately prosecution wants to make much of this simple document. Prosecution tried to make "Sheri Kashmir Zindabad, vindicating the honour of Sheikh Saheb etc." written on it as a material for proving this conspiracy. He referred to the lines which mention 'fascist tendencies' of Bakshi Ghulam Mohd., "Mr. Amin was a political worker and in coup - 1953 he openly said that democracy was being murdered and therefore termed it as a condemnable action in the eyes of public opinion. Mr. Beg said that Mr. Amin had no consultations with him or other accused. People wanted to vindicate this coup of 53 because it was most unconstitutional and illegal. It was a murder of democracy. Demand for restoration of rule of law would not constitute a conspiracy affirmed Mr. Beg and that there was nothing illegal in this document.

Dealing with Exp. 170 written by Mr. Beg himself he stated that this document was written by him from Udhampur jail to Sheikh Sahib who was in Kud jail. It was sent through normal channels of the jail. Referring to this letter he stated that no code was used. Prosecution alleges that something about Peer Abdul Ghani had been written, because words like "rumours" and "Peerjee" were mentioned in it.

Referring to the first para about 'rumours' Mr. Beg stated that there were rumours about Sheikh Sahib's release and he wrote about that in this letter. Prosecution alleges that that this was something about Pir Abdul Ghani. Mr. Beg told the court to take judicial note of the fact that Sheikh Sahib was released just after a week and these were his interpretations as the author of this letter. Therefore, Mr. Pathak's inference that it referred to Peer Abdul Ghani's confession falls to the ground.

Mr. Beg then commented on the word 'Peer Ji' and told the court that he had explained at length the antecedents of this 'Pir ji' in his statement. He told the court that he wrote about the epidemic which was the cause of the death of 'Pirji' and asked whether Peer Abdul Ghani's confession could take a form of epidemic. Mr. Beg stated that he mentioned flu as well which was prevalent at the time of the death of Peerji and could that also mean that it meant confession of Pir Abdul Ghani. If that interpretation was put then whole context changes.

Peer Abdul Ghani has made his alleged confessions on 28th December. He asked whether he could learn about this confession just after two days in Udhampur Jail 200 miles away from Srinagar and more so when all communications remained closed due to winter

months, and strange enough that he wrote about it to Sheikh Sahib on 1st January. Could it be a telepathy asked Mr. Beg? He affirmed that the letter was in plain words. He then referred to the recovery of this document and pointed to the court that how dubiously the search was made. Sheikh Sahib was first arrested and the search was conducted in most heinous way when none in the house except Pardah-Nishin ladies were present. Even his brother was not allowed to be present there. Not ^{one} respectable citizen was called to watch but only a host of M/s Matoo, Sharif Din (magistrates) and police were allowed to be there.

Referring to his own house search Mr. Beg drew the attention of the court to the answers given to question 177 u/s 342 in his Oral statement. He pointed out how repression was taken recourse to when this search was conducted. He repudiated the fact that documents as alleged by the prosecution were recovered from his house. No independent witnesses had been produced to prove this allegation. Only chowkidars and chance witnesses from places far off were called. Not even the Superintendent of Mission Hospital was called. Instead National Conference Personnel were called to attest the search. He asserted that the namberdar and chowkidar of his village nor even the Dharat employees were brought to watch the search. Another fatal thing about this recovery was that prosecution alleged that Zaman Parrey had gone to his house and he had given a clue to the police and then this search was made. Mr. Beg asked whether prosecution got any corroboration from these alleged documents about conspiracy etc. in which Zaman Parrey, as alleged was associated with them. Mr. Beg said on 26th May 57 he was in jail in Srinagar and they could carry him handcuffed to his home and conduct the search in his presence. These circumstances thus were fatal to prosecution affirmed Beg Sahib.

Dealing with series 33, 34, 35 and 36 Mr. Beg quoted from his oral statement in reply to questions 60, 69, 70, 71, 141 etc. and submitted that on 24th October, 1956, he made a forceful statement in J and K Constituent Assembly repudiating the right of Bakshi Ghulam Mohd. and his party to finalise the accession. ~~and he told them~~ in the Assembly he told them that it would be to dishonour the pledges given to the people. He left the Assembly and in the morning left for his home place. He asserted that can it be possible to believe that when he challenged right of the ruling party about accession that he would carry most incriminating document on his person. He disassociated himself with the existence, writing and recovery of this document.

Referring to Exp. 33 'Bara-er-i-Akram' he stated that the interpretation given by Prosecution was totally wrong. He stated that it meant simply respected brother and not 'Brother Akram' as Akram was an adjective and means respected. Nobody who knows even ABC of Urdu language would give that meaning to it. Really the documents were written by the Prosecution and it has fallen

on us to translate them correctly. It was dated 13th October, 1957 but prosecution states that actually it was written in 1956. Prosecution has told that this was a mistake but benefit cannot go to the prosecution because a patent ambiguity cannot be corrected be evidence. Allegedly this letter was seized on 24th October 56 at Leterpora. Police know the author of this letter when Mr. Anand told them about him when he (Mr. Anand) was arrested in connection with "Jugglery of Budget" pamphlet on 10-11-56. It was a strange thing that this case was instituted on May 21, 1958 and Mir Ghulam Rasool the alleged author of this letter remains at large for such a long time. He was not arrested, nor interrogated and his house was not searched even after prosecution knows that highly incriminating document about him was recovered. He on the contrary was made chief Engineer of Jammu Irrigation Department, where access to Pakistan would have been a plain walk over. Who under such circumstances can believe the prosecution story that Mr. Mohiuddin Shah requested P.W. Fida Mohd. to arrange the passage of Mr. Ghulam Rasool accused to Pakistan. Mr. Beg termed it as preposterous, unheard of and unbelievable. In spite of all this Mr. Beg told that their Lordships of High Court released/on bail because the prosecution story was by itself unworthy of credit.

Mr. Beg referring to the last para stated that the names have been openly mentioned. He asked where goes the code name racket about it. The evidence about handwriting identification amounted to nullity was asserted by Mr. Beg. He repudiated the charges made by the prosecution and denied his and other accused's association direct or indirect with this document.

Mr. Beg referred to document 36 and told the court that his observations were similar. Further he stated that there was an initial "G.B." on it and that was over written. That was done only to connect it with 33 document. He termed it as a mere forgery. Quoting from the last para conveying salams to Sheikh Sahib and others he submitted that if Mr. Ghulam Mohammed Chikkan were the author of it and he also was the conspirator as alleged by the prosecution he should have been devoid of reason to write such an open language and facilitate the work of prosecution to prove this fabricated story.

He further submitted that the evidence of handwriting was almost nil and asked whether suspicions can substitute judicial proof. He affirmed that this document never advocated the use of force, violence or overthrow of Government. On the other hand it mentions to/conventions on various places in the State. He (author) advocates mobilization of public opinion and not the use of gun cotton slab, violence and overthrow of Govt. Use of clear names repudiates the use of code names. Mr. Beg said that it did not give even the remotest suspicion about the unlawful activities alleged by the prosecution.

Referring to 34 he told the court that he had the similar comments and asserted that no offence whatever nor even a suggestion for any offence was conveyed by it.

Referring to 35 document he stated that this was not recovered from him and inspite of that this document advocated the use of peaceful methods and invoked the mercy of Almighty. The interpretation given by the prosecution about 'Panchwan Rukun' was far off from the meaning this word has in Islamic History. Assuming it to be the document from Hāji Ishaq who was alleged to be one of the inner circles Mr. Beg asked would it be believed that he would furnish the proof about the conspiracy/himself. In proof of recovery of this document even the attesting witnesses have not given the signature, Summing up he told the court that this series did not contain a word suggesting any use of violence, force, or overthrow of Government.

Referring to Exp 80 Mr. Beg stated that this document was never received by him nor recovered from him and was never written by Khaj^w Sahib. The witnesses produced about the handwriting identification were devoid of any worth. Assuming that this document came from Khaj^w Ali Shah; Mr. Beg asked what can be common inference from the contents of this document which high light inflation, corruption, repression and lack of civil liberties that have been eating up the very vitals of Kashmiris. Mr. Beg affirmed that the wealth had concentrated into the hands of a few and the result had been inflation. The author simply wanted to agitate this and he thought that time was ripe when this should be openly told. Mr. Beg stated that strangely enough Mr. Pathak argued that it meant to openly indulge ⁱⁿ sabotage activities. Mr. Beg asked can anybody believe that a saboteur will openly throw bobby traps and use explosive to creat public disturbance, . He submitted with due deference to Mr. Pathak that this would always be done in secret.

Mr. Beg stated that the author was talking about broad-based peaceful object of the Plebiscite Front. Prosecution interpretations were wrong and there was not a word which could remotely even raise a mere suspicion for the overthrow of Govt. Mr. Beg referred to Document 84 and stated that it was alleged to be written by Hissamuddin and addressed to Sheikh Sahib. He maintained that there was not even one word in this four paged document which meant use of force, or overthrow of Govt. It tells about the popularity of Sheikh Sahib and sinking political prestige of the ruling party. He asked can such a talk be treason? Even though some words used in it were derogatory Mr. Beg asked can that constitute a crime? To be critical does not make a man treasonable? Mr. Beg stated that according to prosecution evidence it were the accused who were the victims of police repression. He asked whether it was a crime to say that the workers of Plebiscite Front, were respected. Mr. Beg stated that this document does not contain any word preaching,

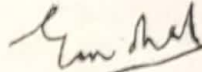
use of force, violence or overthrow of government. He affirmed that the documents were never recovered in the jail or near the jail. He disassociated himself from the existence, recovery or possession of these documents.

(The Court rose for the day)

15-5-61

Issued by
J & K LEGAL DEFENCE COMMITTEE
JAMMU.

Copy forwarded to _____
for perusal and publication.



G. M. SHAH.
SECRETARY AND COUNCIL,
J & K LEGAL DEFENCE COMMITTEE,
JAMMU.

Telegrams = INSAF

THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ - SRINAGAR,
KASHMIR.

Srinagar. 707.	;	*****	;	Branches;
Phone: Jammu. 5133.	;	*****	;	1. The Dawn,
New Delhi. 32202.	;	**	;	Canal Road,
	;	*	;	Jammu.
	;		;	2. 81/48, Diplomatic
	;		;	Enclave,
	;		;	New Delhi-21.

THE KASHMIR CONSPIRACY CASE.

Resume of Mirza Mohammed Afzal Beg's arguments.
16th May, 1961.

Resuming his arguments today Mr. Beg referred to Exp. 81, 82 and 83 alleged to be written by Pir Abdul Gani at the dictation of Mr. Beg. Beg Sahib told the court his observations made so far about other documents would apply to these also. He stated that Pir Abdul Gani himself had denied that. The necessary factum about it was the confession alleged to have been made by Pir Abdul Gani. He denies to have made any confession and in law that alone would count. He was forced to sign the confession statement. Mr. Beg told the court that this alleged confession had no value in law. Mr. Beg referred to Sec. 24 of the Evidence Act in this connection and stated that according to law any confession made under force and compulsion was invalid. Pir Gani was forced to append his signatures on it. He also quoted from Sarkars Evidence Act, under the caption of 'Confessions' and stated that confession will be recorded by a magistrate subject to the section 24 Evidence Act. Mr. Beg stated that when one person was in jail harassed and suppressed the confession of such a person would not be confession of a normal way and the courts according to law have not to press for the proof of it. The section uses the word 'appear' because according to law it does not want the proof as in the other cases. The law has laid emphasis on this and Mr. Beg quoted J. J. Suleman and Walish on this point, The law provided that the court has only to see whether it was relevant and not whether it was true or false.

Quoting 1935 Allahabad Mr. Beg stated that the law wants that confession should always be free from inducement, force etc. He also quoted 1955 Travencore Coshin wherein it was laid that the accused retracted from his confession in the sessions Court and their Lordship's held that even this retracted confession could not be used against any accused.

He also referred to 1948 Nagpur which provided that it was not necessary to get a positive proof that a confession was obtained by force because such proof could not be available in most cases. Mr. Beg stated that in view of all this a broad outlook had been adopted and even on the basis of conjecture such confessions have been declared worthless.

Mr. Beg then referred to the application of Pir Abdul Gani to this court dated 11.6.58 and stated that 11.6.58 was the first day when this court sat at Kud. Pir Abdul Gani had been driven to Pachot jail in the following morning. He at once scribbled the tale of his horror and submitted that to the court. Mr. Beg told the Court that it was of tremendous importance that as soon as he began to breathe the free air free from police influence at Pachot jail he put the tale of his woe before the court. He narrated the story of the helish torture he was subjected to at Srinagar Interrogation Centre under Daljeet Singh of the Government of India aided by Sheikh Gulam Qadir of Kashmir C.I.A where he was abused, beaten and harrassed beyond imagination as was borne out by his application. Mr. Beg pointed out that forced sleeplessness was not heard of even about the war criminals and International spying agents. The prosecution have not done so only to a few Kashmiris but to hundreds of people and if ~~--- today~~ today Kashmiris are estranged from India it was the fault of such people who subjected the patriots of this place to torture and to third degree methods. The story of torture has been supported by Kh. Ali Shah, Mir Gulam Rasool, G.M. Chiken, Mirza Gulam Qadir Beg and Mistri Mohammed Nazir and prosecution witness Abdul Rahim. Mr. Beg asserted let there be immunity from further harrassment and a word about it from Pt. Jawaharlal Nehru they would prove this from hundreds who have been tortured so far. Pir Abdul Gani was even tortured by forcing him to walk barefooted on ice. Mr. Beg pointed out that according to law the statement of the accused was more important than the ordinary type of evidence. The inducement offered to him varied. He was allowed a momentary rest and then again tortured. Sometime he was offered gratifications. He was told that if he confesses against Sheikh Sahib and Beg Sahib then Bakhshi Sahib would treat him as his own son. Even Bakhshi Rashid, Makhdoomi and others would come and torture him and after that try to win over him. This application states that the ADM used to be present there and he would also persuade him to fall in line with the police. Pir Gani requested the ADM when he was taken for giving the confession to give him a few moments separate. He related his woeful tale to ADM who showed his inability to help him in any way and advised him to sign the confession. Mr. Beg submitted that such a confession was worthless and prosecution depended so much on it. He asserted that whatever might be the case with them the World and posterity will judge them correctly. Pir Abdul Gani was told on June 9 to become the approver and threatened that were not he to do so the judge, the court, and police would not give him any protection.

Mr. Beg stated that Maqbool Makhdoomi was a police officer and he has attested many a recovery memos and also was the brother of Saifuddin Makhdoomi who has filed the FIR in Hazratbal case. Mr. Beg requested the court to mark that when this application was made in the court the prosecution did not say a word which mean admission. Ordinary applications by the accused were contested by prosecution in this court. Mr. Beg stated that was how the people were ruled in Kashmir.

Mr. Beg then referred to the answers of questions 1 and 161 of Pir Abdul Ghani u/s 342 Cr. P.C. in which he gave the court the details of the torture inflicted upon him by the police and also told the court how ADM behaved towards him. Mr. Beg then referred to the statement of Mr. Matoo the ADM as PW in this case pertaining to the party given by Sh. Ghulam Qadir after he had received a Presidents medal. Mr. Beg affirmed that this behaviour of the Magistrate should be noted because law wants that judiciary should keep detached from police. The statement given by him under cross examination was very helpful asserted Mr. Beg. ADM had not satisfied himself about the detention of Pir Abdul Ghani and under law nobody except Inspector General of Police can exercise any kind of control over detenus and Pir Abdul Ghani was a detenu. He was asked whether he could remove a detenu from the place of detention. He had not obtained previous permission of the government as provided by law. ^{he} simply acted on the advice of Sheikh Ghulam Qadir's because his word was supreme law in Kashmir.

Mr. Beg then referred to Exp. 279 the application of the Police for recording the statement of Pir Abdul Ghani and state that ADM had not made any satisfaction for himself except that he acted upon Police advise. Mr. Beg stated that this application had not even the name of the accused in it and Magistrate without satisfying himself whether Pir Ghani was accused recorded the confession. ADM deposed here, said Mr. Beg, that he satisfied himself on the report of CIA. ^{alone} He should have recorded the fact when he got the confession from Pir Abdul Ghani. He instead depends on the information of Police Inspector.

Mr. Beg affirmed that this shows that the confession statement had no credence. Mr. Beg termed this as a 'Prefunctory manner' as ADM did not even see the duration for which Pir Abdul Ghani was under arrest. He did not even see the warrant and detention order neither bothered himself to know wherefrom Pir Abdul Ghani was brought and where he was sent back.

Mr. Beg stated that his statement was full of overwritings which were not signed after corrections by Pir Ghani. Mr. Beg stated that these were inserted later on. The PW (ADM) states that on his table he had inks of different densities and therefore that explains the variations of ink in this confession statement. How observed and fantastic it looks Mr. Beg pointed out. Mr. Beg told the court that two lines had been inserted in the statement

by ADM and on his deposition he agreed that that was done by mistake. This did not bear the initials of Pir Abdul Ghani. Mr. Beg stated that his PW had the ^{temerity} to say that getting the initials of Pir Abdul Ghani was not essential. Mr. Beg stated that the belief alone could be that he (ADM) did all this on the advice of Sheikh Ghulam Qadir and a Magistrate who acts in this way shatters to pieces the rule of law and behaves like a police officer. Under law he had to satisfy himself that the accused was making the statement in a very free atmosphere. He fails to do that and he acts at the advice of the police. Mr. Beg then quoted from the statement of PW (ADM) in the court in support of his argument.

Referring to the orders of the ADM about the destruction of Gun Cotton slabs Mr. Beg pointed out to the court that this ADM used to order in a cursory way to destroy this gun cotton slab on the advice of Sh. Ghulam Qadir knowing this much that that could be conclusive proof against the accused. He quoted from the cross-examination which clearly shows that he did not exercise judicial judgement when disposing this matter but he always depended upon the police advice. He did not even take the trouble of consulting an expert; whether ~~any~~ ^{this} could be preserved as evidence against the accused. Mr. Beg stated that he told the court here that that was the concern of police. Mr. Beg asked, "if that was the position why this matter was referred to him." Mr. Beg asserted that it could not be termed as ignorance but as a simple and mere untruth because another PW Mr. Afzal told the court that Gun cotton slabs could be preserved without explosion. Could not he even call the man who was alleged having a connection with such nefarious activities. If judiciary functions ~~are~~ ^{are} like this and depends upon police advice alone, the question was Mr. Beg asked on whom to depend in such a sad state of affairs. He surrendered his judicial personality to Sheikh Ghulam Qadir asserted Mr. Beg. He knows that Sh. Ghulam Qadir was not an expert and still he depends on his advice rather orders. He does not even direct a Magistrate to look to the destruction of this material and stated here that he did not consider that necessary. What a dispensation of justice asked Mr. Beg. How could accused expect that he would give a honest statement in this court affirmed Mr. Beg.

AFTER THE BREAK.

Resuming his arguments Mr. Beg stated that he put questions to PW (ADM) of about gun cotton slabs but he did not satisfy him as to how he ordered the destruction of these materials without knowing ~~for~~ ^{for} himself whether it was meant for the persons alleged by the police. He could have himself found the clue about it. He did not act independently when ordering for its destruction.

He did not even note the specifications of the material - Ornage fuze , shining powder etc. He told here that according to his observation such specifications were not given on other cases like Bomb Case etc. Mr. Beg pointed out that this magistrate had sealed his mind about a ~~case~~ ^{own} case which was in his court and also a case in which he appeared as a prosecution witness. It was obvious that he had made up his mind to work on the advice of the police. He wants, affirmed Mr. Beg, " to condemn the accused on the custom prevalent in Kashmir at present." He did not even satisfy himself ex-parte about the material that was meant to be produced as a material evidence in this case. He acts only on the police advice . He did not even know as to who brought the material to him nor did he know as to whom he gave it for destruction. He comes here as an ordinary witness. Mr. Beg affirmed that the court has to consider the worth of his evidence in these circumstances. He did not even read the FIR and diaries as was evident from his statement.

Mr. Beg x said that Sheikh Gulam Qadir on May 8, 58, wrote to this magistrate (ADM) to order the destruction of this material and he did so on the very day and did not even order for the preparation of its photographs and on 17 May, 58 prosecution against the accused was sanctioned. P.W. Hafizullah had produced this material in Jan and for a duration of 4 months it had not become dangerous. Was not the way of destroying this material dubious asked Mr. Beg. The prosecution story from this stands fully exposed and the manner in which this magistrate acted was most disgraceful. Mr. Beg asserted that actually this magistrate was a pawn in the hands of this police officer of the CIA. Mr. Gulam Qadir got the remands in the Hazratbal Case from him. Most of the cases from Uri side were sent to him. Dozens of cases about the Plebiscite Front Organisation were sent to him. He was the judge in the Bomb Case. He recorded the statements under section 164 in this case. He records the pardon to Attaullah beg and Zaman Parrey as approvers in this case. He was specially sent to attest the search of Sheikh Muhammed Abdullah's residence in 1958 at his re-arrest. He was the judge under Enemy Agents Ordinance against Muhibullah and others and discharges them on the mere ground that police did not produce evidence on some days. These became the PWS in this case. These persons were involved in a most heinous crime and in a similar case one of the colleagues Mr. Zarger had been rotting for the last 3 years. But these persons were discharged on a mere pretext. It was before this magistrate in that case that Muhibullah had confessed his crime. He had confessed that he was a foreign trained and a Pakistan agent yet he discharges him. This was so because they became PWS later on in this case. Summing up Mr. Beg told the court that the mind of this magistrate was fully influenced. He was absolutely in the hands of the police.

Therefore the behaviour and manner of his action vis-a vis Pir Abdul Ghani's confession should be taken note of it and this provides positive proof that the confession of Pir Abdul Ghani was faked. Law provides that even if there was a conjecture to show that a confession was faked it should be rejected. But here the circumstances and material events show that the confession was obtained under duress. In reality Pir Abdul Ghani made no confession and it was copied from police files asserted Mr. Beg. These were the fatal points ^{against} for the prosecution story affirmed Mr. Beg. Referring to the evidence of Hafizullah, Zaman Parrey, Mohibullah Beg etc. Mr. Beg stated that if these depose in favour of prosecution they become the PW and if anyone like Peer Ghani does not agree to help the prosecution he becomes an accused. Pir Abdul Ghani has been a Stalwart in freedom struggle, loved by people and respected. Had this story been true police would have depended on him and not on smugglers, murderers and embezzlers like Zaman Parrey, Attaullah Thindum, Mohibullah Beg, Fida Mohd. etc., asserted Mr. Beg. He further said that there was not an iota of evidence against Pir Ghani in this case except this alleged statement of confession. He refused to subscribe to the concocted story and therefore police did not depend on him. This statement of confession ^{was} obtained from him under duress and repression. His daughter was abused and he was threatened by death and all this in the name of India. These atrocities conducted by Central Interrogation and the CIA were responsible for estranging people from India and creating hatred against Kashmir Govt. He repeated his request, that if immunity from further harassment was guaranteed the accused would show who were the criminals. Mr. Beg stated that law gives the court fullest liberty to refuse such statements which were obtained under duress and repression. He asserted that this statement was inadmissible in law.

Beg Sahib then referred to Exp. 83 alleged to be a letter dictated by Mr. Beg to Pir Abdul Ghani. Mr. Beg told the court that he denies to have dictated it and Pir Ghani also had denied to have written, it. Quoting from it Mr. Beg stated that it tells about somebody going back to service, cancellation of parole, bad health, the Plebiscite Front, self determination, P.S.P. etc. but it did not mention any single word that could be called as incriminating. It shows that the writer was insistent on the right of self-determination. It talks about repression and economic programme and could that be achieved by planting bombs etc. asked Mr. Beg. Every word discusses the political programme of Plebiscite organisation and has not even a hint about the use of force or overthrow of Govt. as alleged. Referring to "Pakhri Pur" expression in this letter Mr. Beg denied that it meant Pakistan. It refers to the programme of Plebiscite Front and ^{also} to the maladministration ^{lack} of civil liberties here in Kashmir. It tells about the objectives of Plebiscite Front. He quoted from this document stating about the

malpractices of elections in the State. Mr. Beg stated that the author discusses the fate of the people, "if they took part in these stage managed elections. Under prevalent circumstances the ruling party by its under hand means would capture all seats itself and trumped/far and wide that there was no opposition against them.

Mr. Beg stated from this document it was obvious that the object was not criminal or overthrow of the Govt. but only the demand for the right of self-determination. This document had been alleged to be meant for Khawja Ali Shah and according to the prosecution the 'truth of heart' was spoken. Be that so did it prove that annexation with Pakistan was meant, affirmed Mr. Beg. It talks about the socio-economic programme of the Govt. Mr. Beg asserted that the author wanted to know whether Bharat would tolerate that type of government which would hold democratic values supreme under the present context of things and asked whether posing such a question meant a crime.

Summing up he told the court that he was supposed to have written this document but the language used was in third person- Shakespeare may have allowed Ceasar to refer himself in third person but Mr. Beg stated that he was 'no ceasar' but was a poor accused. Quoting from Shakespeare's "Julius Ceasar" Mr. Beg said, "Ceasar says, 'Danger full well knows that Ceasar is more dangerous than he.'"

The Court:- "Once 'Julius Ceasar' was staged in the College in which I played the part of Ceasar and Mr. Beg now and accused that of a robber."

Mr. Beg:- "Yes sir, I was a mender of bad-soles/^{then} I am mending bad ~~under~~ ^{individual} today."

The fantastic lie was that wirtter had met Beg Sahib 3 times as was apparent this very letter. Mr. Beg asked how could it be possible that he (Mr. Beg) author of this letter met the self-same. Mr. Beg. This was unheard of. This letter had profuse comments on Mr. Beg himself and it was fantastic to believe that it could have been written by him. So the alleged story of the prosecution was disproved by the document itself that it was written by him.

Regarding the allegation that some names were written in code, Mr. Beg stated that inherent evidence from this document refutes these allegations. _____ Abdul Aziz was meant to be either G.M. Chikkan or G.M. Butt. How could that variation be possible. In one documents Haider Sahib meant for Pakistan and in another "Pakar Pur meant so." ^{refutes the nature of contradiction/allegation fully.}

Referring to Exp. 82 he stated that this document addressed to Hamdani Sahib as alleged had no code names on it and thus contradicts the prosecution story. He disassociated himself from the existence of this document. However this tells about the preparation of electoral rolls and could that be treason asked Mr. Beg.

He refuted having written Exp. 81. This mentions about about the general election etc. could any one be prosecuted for

A 41798

V2H/19194/7

asked
expressing his opinion/Mr. Beg. He further stated that no code had been used in this.

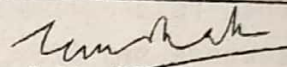
Referring to the document 83 he told the Court that advocate the boycott of elections and document 81 advocates dis-association with the elections and these documents were written by him (Mr. Beg) as alleged.

He asked could there be any other more fabricated and fantastic contradicting story of the prosecution than this one wherein, two contrary views ^{were} ~~are~~ expressed about a certain thing by one and the same person.

(The court rose for the day.)

Issued by
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Copy forwarded to the _____
for perusal and publication.


G.M. SHAH,
SECRETARY AND COUNCIL,
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

TELEGRAMS - INSAF

ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ - SRINAGAR
KASHMIR.

Sgr. 707.
Phone: Jammu. 5133.
New Delhi. 32202.

Branched:-
(1) The Darna, Canal
Road, Jammu.
(11) 81/48 Diplomatic
Enclave,
New Delhi.

THE KASHMIR CONSPIRACY CASE.

Resume of Mirza Mohd Afzal Beg's arguments.
17th May, 1961.

/and Beg Sahib summing up his arguments of yesterday stated that he had challenged the admissability of the confession and refuted his association with documents 80, 81, 82, and 83. He had quoted the case law as well. Further he submitted that these documents sought to be the proof of the confession statement were also inadmissible. even on conjecture the confessions are thrown off by the courts as pointed out by law. He denied to have dictated them and said that Pir Abdul Gani also had denied to have written them. No identification of the handwriting was made. These documents itself refute the theory of the documents and these do not contain a remotest hint for using force, overthrowing the Kashmir Government and the annexation of Kashmir with Pakistan. On the contrary they tell about the civil liberties, self-determination and repression etc. The contents do not even support the allegation of the prosecution that there were code names in it. Quoting the arguments of Mr. Pathak that "the boycott of the Constituent Assembly was unconstitutional" he termed this as a misnomer and devoid of any reason. He asserted that this had been recognised as a fundamental right of the people all over the democratic countries of the World. This thesis would have been correct in a mediaeval age and under a despotic ruler.

Mr. Beg then gave a resume of his arguments and stated: "That the existence of the War Council had not been proved and letters alleged to be received from Pakistan were mere fabrications and Exp. 34, 35, and 36 were downright fabrications. Evidence about the authorship judicially amounts to nothing. These letters have been disowned. Constructions put on them were wrong. Code names used have been fabricated. There was no evidence to prove them."

Summing up he told that there was nothing in these documents to indicate use of force, violence, overthrow of Govt or the annexation of Kashmir with Pakistan.

He then referred to the statement of Gulam Mohammed Buth P.W 58 and quoting from page 25 of his statement of 27.7.59, "In the time of Quit Kashmir I had come up of age. This movement was led by the National Conference and in that movement there

was a war council which used to issue posters. M/s Bakshi and Sadiq were leading this movement from outside. They were not in jail. Pt Jawaharlal Nehru had supported this movement. The object was that the people should decide their future themselves. In the freedom struggle there were no internal disturbances and hatred about other communities. The Exp. 84 is in the hands of Ghulam Mohd. Chikkan. "Mr. Beg stated that could it be believed that during this movement when M/s Bakshi and Sadiq were out bogus organisations were set up by some imaginary persons in their name. This witness exposes the story of the prosecution, because he states clearly that in such movement there was only civil agitation. No force or violence was used. This witness on his long experience exposes the myth of imaginary war council.

Mr. Beg then referred to Sheikh Sahib's speeches and said that before going into the speeches of Sheikh Sahib, the statement of Mr. Shiv Nath Tikku and Prof. Toshkhani need consideration. Mr. Tikku was reporting these speeches which contain large number of Arabic and Persian words. In the Examination-in-chief he states that he used to take shorthand notes from his mental translation of Kashmiri. This was not a normal process and many a words would slip off. He affirmed Beg Sahib and would effect the sense of the speech. He was given a trial in the court to take down Sheikh Sahib's speeches. He broke down and could not compete.

Mr. Beg quoted from the cross-examination of Mr. Tikku, in which he said, "I do not know Arabic and Persian." Mr. Beg pointed out that was the capacity of this individual to understand Sheikh Sahib's speeches because these contain profuse use of Arabic and Persian words and verses from Holy Quran.

He then referred to Prof. Toshkhani's statement and quoted his replies of Questions 118 to 122 of his written statement and told the court that from the statement of Prof. Toshkhani it was clear that he was not conversant with Arabic and Persian languages or grammar and the Islamic history. In his cross-examination by Mohiuddin Zargar he told in the court, "I have not written any book of Urdu verse. I cannot say whether word Urdu is feminine. I have not read Islamic history." Commenting on this Mr. Beg told the court that he had admitted the ignorance of Islamic History, Arabic language etc. and in his cross-examination he gave a very poor account of the knowledge of Urdu. He has put in his words which should have been used by the speaker himself and thus he was projecting his own mind. The court was not concerned with what Sheikh Sahib should have told according to the prosecution requirements but what Sheikh Sahib actually said. This gentleman has mutilated these speeches.

Taking up Sheikh Sahib's speeches Mr. Beg said that Sheikh Sahib had pointed out that his speeches were distorted and disjointed at places. Mr. Beg requested the court to keep these points in view when assessing the speeches.

Referring to the charges made by Mr. Pathak in his arguments that (1) Sheikh Sahab chose to address religious gatherings for this purpose, Mr. Beg stated that the prosecution had produced speeches delivered in Hazratbal and Jama Masjid. The question was did Sheikh Sahab during his release deliver speeches only at these two places. In fact he delivered his speeches at Druggan, Kralkhud, Rainawari, Khan-kahi Maula, Duru, Baijbi-hara, Anantnag, Dayalgam, Idgah and many other places. None of these places was a religious place and at Kralkhud and Rainawari non-Muslims were present predominantly. In order to malign Sheikh Sahab's prosecution only produced speeches of Hazratbal and Jama Masjid. Prosecution have accused him to have addressed religious gatherings only. Long before becoming the Prime Minister and during his Premiership it had been his habit to offer prayers at Hazratbal and Jama Masjid and utilise the Muslim festival to make a moral appeal to human values to dignity of man. Due to these means he was successful to preach the gospel of secularism and brotherhood of man. When in 1947 Congress failed and bowed before communalism he alone succeeded in keeping brotherhood of all communities intact. It was because of such speeches. He has often addressed gatherings at various non-Muslim festivals for this very purpose. It was a good thing then and now the same thing has become a crime because he does not agree with Government of India's present stand on Kashmir. During his short spell, of freedom in 1958 there was no Hindu festival where he could go and address the Hindu gathering. He addressed these two Muslim gatherings and talked about the philosophy of Meraj (the spiritual elevation of man) and Abu Baker's life which was a model for truth and sacrifice. Mr. Beg exclaimed, 'was this treason?'

Third charge Mr. Beg stated was that he preached communal hatred. Mr. Beg stated that this was an absurd lie. These speeches teach tolerance, love of mankind and brotherhood. Talking in Islamic terms does not mean talking communalism. He usually referred to the lives of the Prophet of Islam, other Prophets and Divine men of Islam. Not a word can be indicated which can show that he spoke derogatory of any person and community. It was easy to talk about secularism, communal harmony but it shows that in reality no such thing exists on the other side, affirmed Mr. Beg. It should be noted that Kashmir was a predominantly Muslim Country and this has to be tolerated. It would be evident always whether in the reception of Panditji or fight against the raiders. Mr. Beg repudiated the charge that Sheikh Sahab preached violence. Mr. Beg said that he preached tolerance and forbearance, fortitude and love of Hindu, Sikh and Musalmans. He was critical of 9 Aug coup and there was where the shoe pinched.

Mr. Pathak argued that Sheikh Sahab was 'weaving a

of words which according to him⁴ were useful for assessing the work⁴ of Sheikh Sahib's mind. Mr. Beg stated that these words quoted by Mr. Pathak were not Sheikh Sahib's words but Prof. Toshkhanis and Tikus words.

Mr. Beg then referred to Exp. 269 Sheikh Sahib's speech at Hazratbal, and quoted: "Muslims should first become ~~mominas~~ and first like a granite."

Mr. Beg stated that the objection was taken about this sentence. It only preached that every Muslim should become a momin which meant a Musلمان—a believer in peace.

Reading from the speech.

/granite
"That today is the death anniversary of Hazrat Abu Baker. Had Muslim his life in view the majority of them would have been men of strong character and would have been on the right path. The people who do not follow the footsteps of its leaders do never prosper..... He was the first divinity who believed the Prophet of Islam. His position became very high and he was elected first Caliph. Many an imposters rose during his time to disrupt the society but he stood fast as a rock. Had we known what Islam meant we could never be misled today. Today it was not the enemy who was against us but one whom I reared up myself and who would say that his loyalty towards me was the sixth article of faith for him. These were the friends who showered arrows on me. I am only grieved about it. I have no ill-will for them. I was considered to be a family member of Jawaharlal Nehru. He helped me in my freedom struggle..... The 9th August, the day of killings, will also be remembered..... In difficult Holy Qoran always sustained me....."

Mr. Beg says that Mr. Pathak termed this as 'full of venom. Mr. Beg termed it as a hight of poveristy to call such a dignified speech as full of venom. Sheikh Sahib in his speeches compares evil forces with spiritual forces and states that presence of evil forces was inevitable because these have been in exixtence from eternity. By this ~~comparision~~ he passifies the tense feelings of the people who were subjected to unheard heights of repression by the forces that be. He tells the audiance that he became a little depressed but he had no venom or hatred against anyway because he was not stabbed by an enemy but by a friend whom he had brought up and who had termed his loyalty towards him (Sheikh Sahib) as an article of faith. This grief was inevitable and as it showed no anger and no hatred affirmed Mr. Beg. Mr. Beg quoted from Juliues Ceasar, and said when Ceasar got a thrust from Brutus he said, "Ete tue Brutus" and said that was the actual position and this fact Sheikh Sahib had explained to his audiance. ~~Sh. Sahib~~ tells about Pt. Nehru in the same sense and spirit as he used to tell in the past and recollects his support. Did that mean Venom asked Mr. Beg. Sheikh Sahib further says that in this agony and misfortune he depended on the guidance of Holy Qoran which teaches fortitude, forbearance and belief in God. To term as venom was the highest folly, affirmed Beg Sahib.

Sheikh Sahib expressed surprise how ^{coup} of August 9 took place when Pt. Ji was at the helm of the affairs and when such a thing was least expected in his (Pt. Ji's) time. Mr. Beg said that it was distortion to say that Sheikh Sahib enjoined people to remember the 9th August happenings for revenge. Sheikh Sahib only expresses a surprise because he could not associate Panditji with

these happenings.

Mr. Beg stated that Sheikh Sahib preached steadfast adherence to the truth. If that was also banned then many a reformers of the world would have no place to preach their high ideals. Even British Rulers were not nervous and never banned reference to the history and preaching of moral and spiritual values.

Mr. Beg stated that in his speech Sheikh Sahib gives a picture of sad things which were happening under the ruling party's patronage. He refers to history in his speech. He said that dancers were brought for various Circus show and entertainment of people. Who does not know that this was a true fact in Kashmir" asked Mr. Beg. University grants commission also condemned such things in India where these have been stopped. Even in Jammu and Srinagar condemnatory posters were issued against such evil things. If Sheikh Sahib lodges a protest against it he was told to have preached violence and treason. Can a man who says that such activities are against the teachings of Islam be condemned, asked Mr. Beg. At the most he may be called that he was not much Europeanized and progressive. Beyond Pathankote one may say Jagoo Mama Hai Hai but in Kashmir when Circus shows were condemned it was told that treason was preached. "High treason" it was because such things were patronized by the State Govt," exclaimed Beg Sahib. Every man has the right to say that drama performers whether by girls or boys were against the culture.

Sheikh Sahib tells his audience to become a Muslim in word and deed and not by outward appearances. He preaches that a Muslim suffers privations and tribulation and never falls to greed or temptations. He referred to repression in his speeches said Mr. Beg and many a papers which were not friendly to them relate this woeful tale. They were allowed to say that but Sheikh Sahib," is being tried for treason if he says this " asserted Mr. Beg. He asked as to who preaches communalism, the accused or the men on the other side. "Beg Sahib said that asking people to have family planning does not construe treason as has been taken the meaning of the words, "reduce your families"

Mr. Beg then referred to the directions given by the Prime Minister for advocating family planning every where when Mr. Beg was himself the Revenue Minister of the State. Mr. Beg said that Sheikh Sahib reiterates Panditji by preaching family planning. "Anybody may say eat less and preserve the freedom," Mr. Beg asked as to what was treasonable in that. He asked if aid from Centre will, flow indefinitely in a State. This would mean financial crisis and Indian Constitution provides that when there is such a crisis President must intervene. If this remains a continuous process

would India be forced to import more and more from foreign countries and thereby those foreign countries would begin to interfere and bring the hard won freedom in great peril. Beyond Pathankote such advice was loyalty and in Kashmir it was a treason asserted Mr. Beg.

AFTER THE BREAK.

Resuming his arguments Mr. Beg stated that Mr. Pathak tried to make out that State had made tremendous progress and Sheikh Sahab tried to belittle it. Mr. Beg asked if Rajaji asserts in India that no progress had been made there he remains to be a patriot why / the same if related in Kashmir was termed as treason. If Kashmir ~~thing~~ made progress then 2 Crores would not have been a subsidy only on food. If really the food were cheap in Kashmir why acute divergence in prices of food in Jammu and Kashmir. asked Mr. Beg. Pt. Prem Nath Dogra tells this day in and day out, -cheap food did not mean prosperity when the prices were subsidized affirmed Mr. Beg. This was only for Kashmir and not for Jammu because it meant that vote of Kashmir could be won by giving cheap rice. Sheikh Sahab criticised the cinroads made on Kashmir culture because it has been made a victim of aggression. Sheikh Sahab wanted to put a stop to that. Can that be anti-India. He continues to refer to the opposition parties as friendly and explains the peaceful attitude a Muslim should take even about an avowed ~~and~~ enemy. He refers to M/S Bakhshi and Sadiq in the context of the past comradeship had suffered with people at the hands of the autocratic ruler and enjoins upon the people to be calm and cool headed in times of trouble and sorrow. Mr. Beg asked if that was treason. Mr. Beg stated that it was open to any person to say that he would bring pressure of public opinion so that pledges given ~~are~~ ^{were} honoured. Mr. Beg stated that it was his honest duty to tell to India to honour her pledges. Would that mean treason asked Mr. Beg. He further stated that Sheikh Sahib holds this conviction that ultimately the truth will prevail. This was being told today by followers of Gandhiji-like Pandit Nehru, Vinabha Bhawe and others. This was taught by Gandhiji himself and this ^{was} the motto in the Indian Parliament. Outside Kashmir this was patriotism and in Kashmir a treason. Prosecution Counsel:- That was not the meaning given by Mr. Pathak.

Mr. Beg:- Mr. Pathak's comments led to that. In this speech Sheikh Sahab made a self analysis and told the people to do same. He in his speech tells that on Aug 9, 53 Panditji even became helpless and Sadri-Riyasat without any powers murdered democracy because Kashmiris were weak. This was because there was a feeling that Kashmiris can be silenced by bullets as that lack in courage-

Mr. Beg quoted from Mr. Pathak's arguments in reply to

...the objection raised by Mr. Pandey, prosecution counsel.

Adding further Mr. Beg stated that Sheikh Sahab told the people that due to this weakness 9 Aug coup was enacted. In spite of that he advises the people that good begets good and evil beget evil and therefore actions of men in this world should always be good, honest and straight forward.

Mr. Beg stated that in this speech Sheikh Sahab reiterates the help India and particularly Jawaharlal Nehru gave to Kashmir politically and morally. Then he refers to the pledges given to Kashmir and wants that India should honour these pledges. Can this be called treason asked Mr. Beg. This was a historical fact that India gave pledges that people of Kashmir were supreme in ~~their~~ deciding their future. Mr. Beg asked how did it become treason if same thing was repeated. Mr. Beg stated that at one day the accused may lead evidence that ~~one day~~ when Sheikh Sahib proposed some other way for ~~in~~ deciding the Kashmir question. Pandit Ji flew ~~with~~ ~~in~~ rage and said that Indian pledges must be fulfilled and that alone would keep the honour of India. Sheikh Sahib reminded Panditjee about this very fact and now this was considered to be treason, asked Mr. Beg.

Mr. Beg stated that Sheikh Sahib told the people that he could not deceive anyone because the life of this world was very short and only hereafter was lasting. He assures the people that ~~he~~ would remain firm on ~~a~~ this stand which he took up in 1931. Mr. Beg asked if that meant use of force, overthrow of Government or annexation of the State with Pakistan. Sheikh Sahab talked about the harassment which his children were facing since 9 Aug. Sheikh Sahab had enjoined upon them to be patient and forbearing as Imam Hussain was when ~~in~~ Karbala he was subjected to torture and his dear and near ones were killed. Mr. Beg stated that Sheikh Sahab advises his children to bear suffering and have trust in God and asked whether this also could be preaching of force, violence and overthrow of Government and annexation of Kashmir with Pakistan. What a fantastic ~~and~~ canotation exclaimed Mr. Beg. Mr. Pandey:- Mr. Pathak did not say so.

Mr. Beg:- I say that these things do not prove any ingredients of the offence. Mr. Beg then referred to the tragedy of Karbala where Yazid invited Imam Hussain for settling a matter between themselves. He goes with minor children, ladies, babies and daughters hardly numbering 72. They had no arms and no weapons when they reached Karbala. They were trapped by 10,000 armed men of Yazid and they ask ~~them~~ for his head. Hussain says that it was only at an invitation that he came here. He was told that Yazid would not tolerate him. He beseeches retreat or internment in a far off place or an audience with Yazid.

They reject it and declare war on him. To a child they are slaughtered and Hussain enjoins upon his family to bear all this with fortitude. Even a newly born babe was killed. To this Sheikh Sahib refers while advising his children to be patient and forbearing. Mr. Beg states that since 9 August hundreds of our relations have gone through the mill and we all are being treated as traitors because we do not subscribe to accession racket.

Sheikh Sahib teaches the people to bear all, this and to suffer like Hussain but not bow before untruth. Late Maulana Azad writes about this incident and captioned his book as "Great Martyr". But today this very thing was held as high treason," stated Mr. Beg. He exclaimed, "woe to that life where lessons of forbearance and fortitude are termed as high treason." Sheikh Sahib told people in this speech that he never bowed before untruth. He never depended upon material things of this mundane world. He says that, "people who depend upon Gun, gold, army do not achieve anything in this World. They alone live and survive who have trust in God." Mr. Beg said that this was all that Gandhiji taught and it was a tragedy to accuse such a man of having preached violence, use of booty traps, and gun cotton slabs. From prosecution arguments itself it was proved that Sheikh Sahib believed in moral force and faith in God. Prosecution cannot escape this inference. Gandhiji often told his people to depend on moral force and Pt. Ji openly said that he wanted the union of hearts with Kashmir. Sheikh Sahib was condemnatory of those who depend on use of force, gun cotton slabs, gold and army. He enjoins that God alone was the helper.

Referring to another sentence argued by Mr. Pathak Mr. Beg stated that if Sheikh Sahib referred to the firings which preceded the passing of the constitution, he only told a historical fact. Mr. Beg asked that any constitution which was passed on the support of gun and gold does not become sacrosanct and asserted no constitution in the modern democratic set up became a holy thing. Despots used to claim in the past. He asserted that any constitution can be altered and changed by people. He affirmed that the people alone were sovereign. In a democratic age only such constitutions were valid which had the support of people behind it. "It was a fact," asserted Mr. Beg that "Kashmir constitution making was preceded by a blood bath and if they referred to that they were held for treason"

Mr. Beg pointed out that Krishna Menon told the Security Council that Plebiscite organisation was contesting the elections and an emblem was also assigned to them and if it was told with deference that that was untrue, they were held for high treason.

Mr. Beg asked that if Sheikh Sahib referred to the presence of C.R.P., Peace Brigade etc. what was the untruth in that? He further asked "are not they here in this Special Jail, Central Jail and all over in Kashmir." He asked was it treason if that was told.

Mr. Beg pointed out to the court that Mr. Pathak had perhaps missed to read this sentence from speech of Sheikh Sahib that "he had no hatred about them." Mr. Beg asserted that this proves that he preached peace, patience and fortitude. If he condemned repressive activities of the executive why should that be objected to. Lord Wavell brought CRP in being only to crush the freedom struggle movement. Sheikh Sahib poses a question if Kashmir has normalcy why this harassment at the hands of CRP.

Sheikh Sahib addresses his friends in Kashmir and in India not to deceive India. Pt. Ji himself has told that if this sovereign Parliament decides fate of Kashmir it would be incomplete till people would decide it. Mr. Beg affirmed that Indian ~~trust~~ should have come forward and supported that the decision of the people would only be democratic. To say that this country does not belong to Krishna Menon cannot be treason affirmed Beg Sahib. He asserted that Krishna Menon was not a state subject. He had no locus standi here. Sheikh Saheb's contention that this country belongs to Muslims, Hindus and Sikhs of this State was cent per cent correct asserted Mr. Beg. Mr. Beg also affirmed that a few individuals could not take a decision about the whole State. Sheikh Sahib enjoins the oneness of the people of the State and not use of force, violence and overthrow of the Government. Mr. Beg affirmed that Sheikh Sahib preached oneness of man irrespective of caste, creed and colour and can that be termed as treason, use of force, violence. Beg asked.

Sheikh Sahib affirms that he has no animosity with India and Pakistan. Prosecution tells here that words of Sheikh Sahib reveal his mind. Mr. Beg asked if that was so here were his words that, "Sheikh Abdullah is not the enemy of India or Pakistan. This country cannot live without the Indo-Pak amity. This issue cannot be solved by sword." and they speak his mind which furnish a greatest proof of non-violence. Sheikh Sahib reiterates, "that only that accession would be everlasting which would be based on the love." He rules out repression, ~~temptation~~, strength ^{of} army for achieving union of hearts.

He reminds India to honour her pledges. He preaches gospel of love and tells people to be non-violent in their ways. Mr. Beg asked can such a man be accused of violence and treason. But tragedy was that instead of depending on the words of Sheikh Sahib prosecution depends on the evidence of the PWs like Majid Fitter, etc.

Sheikh Sahib tells people that he has great respect for Pandit Ji but till the time he keeps force booming over their heads he cannot win their love. He asked what was there in these words if Pandit Ji himself says that he wants union of hearts.

Sheikh Sahab tells his audience that he was prepared to make any sacrifice for Panditji but he would never give up saying truth. It was alone that Prime minister of India could be approached for holding an impartial enquiry. Mr. Beg stated that even yesterday Akali Dal passed a resolution to enquire into the allegation that Master Tara Singh had affiliations with Pakistan. By no stretch of imagination can it be told that Sheikh Sahib had ill feeling about India and advocated annexation of Kashmir with Pakistan asserted Mr. Beg.

Sheikh Sahab in his speech asks for justice from those who believe in Geeta because Geeta says, "stand by truth if that be even against your children."

Sheikh Sahab in his speech stated that lacs in India still love him. Can that be treason asked Mr. Beg. If certain person like Krishna Menon was not loved by any one does that constitute a crime asked Mr. Beg and more so when no section in Penal Code provided, "Thou shalt love me."

What Sheikh Sahab told was that every one wants the settlement of Kashmir issue. He rejects the way of war and upholds the way of peace for this solution. Can this preaching of peace and brotherhood be termed as violence asked Mr. Beg.

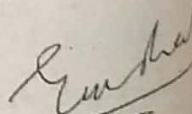
Summing up Mr. Beg requested the court to keep all this in view when judging them and stated that nothing offensive appeared from this speech but on the contrary Sheikh Sahab:

- (1) Condemns the use of violent methods.
- (2) Advocates the need of oneness of men irrespective of caste, creed, colour and religion.
- (3) Urges peaceful and immediate solution of Kashmir Dispute so that uncertainty ends.

Jammu,
17th May, 1961.

(G.M.Shah)
Secretary Jammu and Kashmir,
Legal Defence Committee.

2 Copy forwarded to _____
for perusal and publication.


Secretary

All J and K Legal Defence Committee.

N.B.

Due to an oversight one resume in this series has been issued undated. The date was 15.5.61. The omission is regretted.

Grams!Insaf'

The . THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ - SRINAGAR

Srinagar. 707.

K A S H M I R

Phone: Jammu. 5133.

New Delhi. 32202.

18th May, 1961

Branches:

(1) The Dawn,
Canal Road,
Jammu.

(2) 81/48, Diplomatic,
Enclave,
New Delhi-21.

THE KASHMIR CONSPIRACY CASE

Resume of Mirza Mohammed Afzal Beg's arguments

Resuming his arguments today Mr. Beg pointed out that solitary passages wrenched by the prosecution from Sheikh Sahib's speech of 13th January, 1958 did not give complete meaning unless these were quoted in full. Mr. Beg asserted that this speech did not contain a word preaching violence, use of force, overthrow of the Kashmir Government and annexation of the State with Pakistan. On the contrary the prosecution projected its mind by producing Mr. Tikku and Prof. Toshkhani who deposed and gave their version. Mr. Beg told the court that the speech should be judged on its merits.

Mr. Beg then took up Exp. 269/A/1 a speech delivered by Sheikh Sahib on 17th January, 1958. He quoted :

" Brothers and sisters on January 8th my detention ended. Many people tried to meet me. My friends came in Verinag. They were harrassed. I saw harrassment and free use of the CRP. I saw myself that people were waiting for me and in spite of obstructions they stayed there and the police did not succeed in their evil intentions. When a man becomes engrossed in mundane life he forgets God. He becomes like Pahroah and tries to achieve his object by evil designs. But God always wants that truth should succeed. It does not happen at once. It takes time. It does not happen due to the strength of Sheikh Abdullah or M.A. Beg when but by God's help.

Commenting on this Mr. Beg told the court that Mr. Pathak argued that "Pharoah", 'evil designs', and "CRP" was referred to in the speech by Sheikh Sahib and by it Shiekh Sahib meant Kashmir Government. Mr. Beg elucidating told the court that Sheikh Sahib told the people that all vilification to which he was subjected during his detention did not succeed due to the strength of truth on which he stood firm. Mr. Beg told the court that character assassination was taken recourse to after Sheikh Sahib's arrest in 9 Aug and Mr. Sadiq started this campaign particularly. He used to propogate that Sheikh Sahib had conspired with the United States of America and Adlai Stevenson had met him for this purpose. Subsequently in a way India disowned it but this propaganda was carried on and more so in the United Nations. That was the treatment given to Sheikh Sahib, a man who had placed his whole life for the service of his countrymen. He was

put behind the bars and was not given any chance to explain himself. After his release his duty was to explain these false charges of conspiring with America and betrayal of the movement of which he was the symbol. That was the position and that needed clarification. Sheikh Sahib told the people the truth about his vilification and charges that were levelled against him for the last four years. He explained that making Kashmir a Korea, intriguing with America or betraying the trust of India were nothing but mere concoctions which now had been exposed by the God Almighty Himself.

Mr. Beg stated that Sheikh Sahib had earlier requested President of India, Prime Minister of India and the President of the Kashmir Assembly that he should be allowed to appear before that Assembly and explain the charges that were levelled against him. This legal and constitutional remedy was also denied to him. He was in detention upto 8th January, 1958. On his release he had to give his explanation to the people the highest forum in a democracy. In Kashmir the other side murdered the values of democracy and did not give a chance to the first citizen of Kashmir to explain his position, affirmed Mr. Beg.

Mr. Beg stated that it was a tyrannical execution of democratic values not to allow the Prime Minister to explain the charges levelled against him when he pleads with the President and Prime Minister of India for giving him this opportunity. Instead wild character assassination was adopted. Mr. Beg remarked that criticism of a Government was no crime because Art. 196 of the Constitution allows the criticism and even to the extent that unrest be created. Frankly this may be admitted that such democracy was not meant for Kashmir.

Mr. Beg stated that it was not a crime if the actions were compared. Actions of a particular person may be despotic like Pharaoh. Pharaoh misled the Israelites and he told lies to them. Sheikh Sahib told the people that the charges were as malicious and untrue as that of Pharaoh who forgot that the power of a man there was God's power also. The correct translation of all the words should be made asserted Mr. Beg and more so when the court himself held a diploma in Urdu. Mr. Beg asked whether Aug 9 was constitutional. Sheikh Sahib tells that on Aug 9 constitution was subverted and the action taken on that day was unwarranted. Mr. Beg stated that the sentence, "What had been collected for the last 25 years was finished," did not mean the Government because it has not been there for 25 years. National Conference was only meant by this sentence. Mr. Beg affirmed that it was a matter of grave concern for them. Such a big organisation was disrupted which had been built by their blood which had earned tributes of Gandhiji, Pandit Jawaharlal and others. That was the organisation that kept communal harmony in Kashmir when whole sub-continent was drenched in the sea of human blood.

/above

Now this very organisation has become handmaid statement, conveyed Beg. stated that an arrest would not entail the indirect vote of the and here that was also done.

Sheikh Sahib then refers to the Kashmir ~~dispute~~ because they were the people different alternatives provided by Government have been India itself and tells the people that it were the ~~pevn.~~ Government alone were the arbiters of their fate. Quoting : "in power

... ".....The army came. There was war. The came from Baramulla. Panditji came and here in the Lal Chowk and said that Kashmiris will decide their future. When the matter taken to the United Nations, India and Pak agreed that people of Kashmir would decide it....."

Mr. Beg stated that Sheikh Sahib did not talk about the booby traps, gun cotton slabs etc. but tells about the hard historical facts. He emphasises that truth always succeeds and destroys all evil designs and mischievous lies. Mr. Beg asked did that mean spreading hatred.

Sheikh Sahib tells his people that this does not happen at once. It takes time because natural law dispenses justice by and by. The interpretation of the prosecution counsel submitted Mr. Beg was wrong. This never meant that Government would shatter due to its falsehood. Sheikh Sahib told the people that truth will be victorious in the end and the falsehood would shatter. Mr. Beg pointed out the depth of the feeling when the speaker tells the people that his speech of Anantnag was distorted by the press. Even Prime Minister of India and Krishna Menon complains about that. Did that also mean an offence Mr. Beg referring to the press stated that had Indian press taken the present attitude 8 years ago all this misfortune would have been nipped in the bud.

Sheikh Sahib explains that by this attitude of the press neither Kashmir nor India nor he himself would gain anything. He was depressed over this affirmed Mr. Beg.

Mr. Beg quoted from the speech. "they want to boost up a man. How can that be " and asked was it a crime to criticise a man who had no standing. 'Lori Dastar' means that he had no public standing. That was borne out by the fact that during elections Sheikh Sahib was kept under detention because this man ~~who~~ who is being boosted up by India would not have registered one vote for him. "Can this be termed as a treason ? asked Mr. Beg.

Mr. Beg stated that Sheikh Sahib told the people that he had no money and this had ~~been~~ wrongly translated by Mr. Pathak. Mr. Beg requested the court to give full consideration to these speeches when assessing them vis-a-vis the interpretation made by prosecution counsel.

put behind the
himself. After
charges of

4

of which Beg stated that the grouse of Mr. Pathak was why Sheikh
clarification mentioned the assurances given by Panditji about
vilification and not the condition that Pakistan will withdraw
last forces before the plebiscite could be had. Mr. Beg stated
that Sheikh Sahib was addressing only India and was telling
her to fulfil the promises. Here the issue was of access
that India wanted to resile from this stand. The promise was given
to the people of Kashmir. India and the people of Kashmir were
alone the parties. No promise was given to Pakistan and therefore
India alone was addressed. So far the withdrawal of the troops
was concerned Mr. Beg stated that India undertook to withdraw
them. This pledge was given to the people of Kashmir. India now
wants to keep Pakistan where it is and wants to give 1/3 of
Kashmir. To another neighbour India may give something more only
to silence the people not to talk of the self-determination.
Pakistan was told that they should stabilize the Cease Fire
Line. Can any voice of the people under these circumstances be
effective. "Cease Fire was achieved without our consultation;
Army was stopped at Uri and not allowed to go forward in spite
of our requests," asserted Mr. Beg. If India means to abide by
her pledges and wants to clear the soil from enemy; we are
here to stand by her, asserted Mr. Beg.

Mr. Beg said that Pakistan may withdraw tomorrow. Prosecution
would again come forward and say that this was another proof
of conspiring with Pakistan.

Commenting on, "This is not a new problem. Some papers or
Indian agents may think so. As if I am throwing
agents may think so. As if I am throwing
throwing bomb shells when I talk about the
sovereignty of the people. The slogan was mine
since 1931. Panditji and Mr. Late Ahsan
had also accepted this right when they were
conducting my case. In United Nations this was
accepted. Sheikh Abdullah made the Constituent
Assembly. He told people that there were three
ways open to settlement. He sided with India.
Today he is resiling from that stand. These
charges are fantastic. It is true that I called
the Assembly. I nominated the members....."

Mr. Beg said that the sentences
were quoted by the prosecution to prove their story. Mr. Beg

stated that Sheikh Sahib admits that he made the statement, conveyed the Assembly and nominated the members and this indirect vote of the people was for him and he made the Delhi Agreement. Sheikh Sahib asks why 9 August was enacted, why people were killed because they were Muslims. Had there been a judicial enquiry this would have been proved. The number of the people killed was not yet known. Government says that 86 were killed. Mr. Beg said that those who were in power here were the worst communalists.

It was Idul Zuhra when 9 August tragedy was enacted here and when after 600 years Kashmiri Muslims did not offer their prayers. Strange enough if Hindoo talks about the welfare and a Hindoo or a Sikh about a Sikh that was considered as patriotism and if somebody talks about repression etc. he was accused of treason. Whom would it pay in the long run asked Mr. Beg.

Mr. Pathak holds that the arrest of 9 August was looming large on Sheikh Sahib's mind and therefore that was the motive of the conspiracy. Mr. Beg termed it as fantastic and said that Sheikh Sahib always held democratic values high and when he was released could he subscribe to the undemocratic and unconstitutional dismissal of his Govt, and arrest of his ministers and himself. He had far and wide propagated that democracy was safe in the hands of India. Could he tell on his release that new set up was a socialist set up. "Bakshi Ghulam Mohammed did this unconstitutional Act with green light from Government of India, about which, evidence will be led at proper time and that too from the persons who are not friendly to us," affirmed Mr. Beg.

Prosecution says that Sheikh Sahib called Bakshi so called Prime Minister and that showed this motive. Mr. Beg commented that Sheikh Sahib reminds Bakshi Ghulam Mohd. that it was unbecoming of him as Prime Minister to roam about, spread a lie that there was conspiracy with America. The logic was that the emphasis was to the office held by Bakshi Ghulam Mohammed to which such a thing "roaming about for spreading a lie" did not believe. Sheikh Sahib tells them in the name of Gandhiji who behove in truth and non-violence whether did behove them to spread this untruth about him. Mr. Beg asked, "how was it treasonable, objectionable or even noticable." These were not the Gandhian ways. Gandhi Ji never talked at the back of others and not at the back of his avowed enemies, even

Quoting from the speech that:

Ji "Gandhi has said do not give up non-violence and he had left two legacies, non-violence and truth for India. I want to ask from the friends of India whether they subscribe to the teachings of Mahatma. This very thing has been slaughtered in Kashmir."

Mr. Beg then quoting, "Those very persons who used to cry Pt. Jee Zindabad were killed by bullets."

Mr. Beg said that from this sentence, Prosecution Council inferred from this that Sheikh Sahib meant to excite people and spread hatred against India. Mr. Beg

said that this inference was meaningless. Sheikh Sahib upheld Gandhi Ji's legacy and a person who wants to create hatred against India would never do so affirmed Mr. Beg. Gandhi had preached respect for truth and adherence to non-violence. Sheikh Sahib told the people that Gandhiji gave his life for upholding this ideal. The force of his logic was to make Indian dignitaries to follow those lines of Gandhi Ji and wanted them to respect truth and speak truth. Did that mean to spread hatred against India asked Mr. Beg. If that was banned then how could people criticise actions of Ministers even like Mr. Saraf and Mr. Sogani. Sheikh Sahib reminded Pt. Jawahar Lal Nehru that these Kashmiris gave blood for you when they rose against certain persons who went with evil intentions in Quit Kashmir to Domel against you and who at present were near Pt. Jee. Sheikh Sahib has paid high tributes to Panditji in this speech and also in his written statement herein the Court and that that be termed as spreading hatred against him. This was a mere mutilation of words if that meaning was attached to it as has been done by Mr. Pathak, affirmed Mr. Beg.

Mr. Beg told the court that he would deal with the issues of Delhi Agreement, C.A., at a later stage. He stated that there was not a slightest inference that could be drawn from the speech that Sheikh Sahib preached use of force, violence, overthrow of Kashmir Government/annexation of Kashmir State with Pakistan.

Sheikh Sahib has referred in his speech to the communique of the Prime Ministers of India and Pakistan just after 9 August. Mr. Pathak says that this was irrelevant because it was not on the file. Mr. Beg asserted that it was most relevant because it was (1) a Govt. of India Document. (2) it was connected with the conflict and (3) it was essential for the defence.

Mr. Beg then quoted from the speech,"

" It is said that I want to demolish temples and build Mosques instead. I want to tell them that wherever the life of Hindus and Sikhs will be in danger Sheikh Abdullah will jump to save them. This very Sheikh Abdullah did so when their leaders ran away. He will never change. Hindu and Sikhs have the same rights here as Muslims have."

Mr. Beg stated that the interpretation Mr. Pathak gave about it drove the very soul out of it. Mr. Beg stated that no better material except this could be given to belie the myth that Sheikh Sahib spread communal hatred by his speeches. Mr. Beg stated that in 1947 who kept the Hindoo Muslim unity intact in a country where Hindus numbered 2% and when the Maharaja ran away. Mr. Beg asserted that still they held that conviction and it was never so because India desired it. It was because of that ideology that they were being today asserted Mr. Beg. Sheikh Sahib states this very thing before the shrine of Prophet of Islam that he would stand firm on the oneness of man. If that was also, treasonable then God may save Sheikh Sahib says that if he was not still believed then that

disbelief was a work of devil. Quoting:

/them "It is no use telling who believe in loot and arson. The whole responsibility is of India. Money is from India. C.R.P. is from India on whose backing this Goondaism is being continued. India is responsible for its good or bad name. Here is a big officer from India. He is a gentleman. Responsibility dwells on him."

Mr. Beg stated that Sheikh Sahib tells the people that the authorities here did not care for the respect of Panditji because CRP was molesting people and this entangles feelings about India. He deplores the absence of rule of law. Mr. Beg pointed out that Prosecution has produced tremendous material about that in the court. Sheikh Sahib deplores that the peace brigade which was responsible for Goondaism in Kashmir was paid from the Indian exchequer. He requests Pandit Ji to take action because his honour was most dear to him. He does not tolerate the maladministration in Kashmir. That was a blot on the fair name of Pandit Ji. He talks about Mr. Mehra as a gentleman, and tells him that great responsibilities were lying on him and thus he should protect the honour of India. Mr. Beg asked did that mean spreading hatred. Mr. Mehra's duty was, affirmed Mr. Beg, "to see that the honour of India was upheld and not to institute this complaint here."

Sheikh Sahib said in his speech that Muslims here were not looters. Mr. Beg stated that if Bakshi Sahib wants to put himself in that position he was welcomed. Sheikh Sahib tells India that Muslims were not against India. They were honest poor citizens. He says that if they (Indian officer) cannot be of service here they should get themselves transferred and then he (Sheikh Sahib) will deal with the ruling party politically. Mr. Beg asked can that be termed as treason. Sheikh Sahib enjoins upon the people to follow the footsteps of Prophet Mohammed. He does not advocate use of force, / of booty traps etc., but preaches that people should with patience and fortitude bear the sufferings as Prophet of Islam did and pray for the mercy of those who are harassing them as was taught by Prophet himself.

If it were a speech spreading hatred the immediate slogan would have been "Bakshi Murdabad India Murdabad etc." What are the slogans raised according to the Prosecution version itself asked Mr. Beg. Nothing but Sher-i-Kashmir Zindabad, Rai Shumari Zindabad." That proved how a peaceful effect did this speech produce on people. They demanded only the settlement of Kashmir by peaceful means, bearing grudge to none and having no ill-will against anyone affirmed Mr. Beg. That alone belies the Prosecution story.

Somming up Mr. Beg stated that only moral values were taught by Sheikh Sahib and this speech does not give even a remotest inference about use of force, violence, overthrow of Kashmir Government and the annexation of the State with Pakistan.

AFTER THE BREAK.

Mr. Beg took up Exp. 269/B/1, tape recorded speech of Sheikh Sahib delivered in Hazratbal on 31st January, 1958. Mr. Beg stated that the prosecution counsel stressed the importance of this speech because a spool was made of it and was the proof positive of the prosecution story. Mr. Beg then referred to a book "Suspected Documents" written by Harrison an authority on this subjects like tape recording etc and who had dealt with 7000 cases. He was Director of Scientific Laboratory of Cardiff.

In chapter 12 under the caption "preliminary phase of the examination of documents" he says that in connection with a tape recorder it should not be accepted that whatever was recorded was correct. It can be added and improved. It has got its limitations. Mr. Beg referred to a case in which it was decided. Mr. Beg requested the court to make a note of it and also that tape record of his speech of Sheikh Sahib was in police custody. It was neither sealed nor kept in the custody of a Magistrate. Sheikh Sahib told that there were distortions and phrases were disjointed. Reporter Mr. Tikku could not keep pace when Sheikh Sahib gave a trial to him here.

Mr. Beg then referred to the speech and quoted, "Azad Rai Shumari Zindabad - Sheri Kashmir Zindabad....." Mr. Beg stated that this was the mind on which the audience was prepared and also prospective mind of the speaker i.e. oneness of God and Prophethood of Muhammed. It did not say anything about the use of force, violence or the overthrow of the Kashmir Government.

Quoting from, "The conditions are delicate at this time and I do not want to remain away from masses." Beg Sahib stated that the atmosphere was so much charged that it became imperative on Sheikh Sahib to keep, in touch with the people so that they could not fall victim to rumours which had been wide spread to influence the public mind. Mr. Beg asked a man interested to fight rumour mongering be accused of preaching hatred. Sheikh Sahib deplores the role of press and laments that its freedom was suppressed. Mr. Beg told the court that he gave a list to the court of those papers which were suppressed because they would place their view point before the public. Sheikh Sahib told the public that rumours were spread on radio even, favourable press was choked, people were arrested without trial, maimed and harassed. Mr. Beg stated that the accused related same woeful tales in their statements and it was borne out by pamphlets produced by the prosecution and also from the evidence of Mr. Karani and others. He referred to the application given by Kh. Ali Shah, Gulam Mohi Chiken, Pir Abdul Gani, Mir Nazir Ahmed and Pir Afzal Makhdoomi which gave full details of the repression to which they were

subjected. Sheikh Sahib was critical of the Preventive Detention Act and absence of Rule of law. Mr. Pathak misstated that in Sheikh Sahib's time there was a Detention Act. Present Detention Act provides 10 years detention. Even if that may be so a wrong was always a wrong whoever might do so affirmed Mr. Beg. Sheikh Saheb in his speech compares conditions here with that of India and asks why people were harrassed in Kashmir.

this The inference drawn by the Prosecution was that by referring to such things Sheikh Abdullah wanted to spread hatred against government. Mr. Beg asked that what was the matter that even / simple criticism was not tolerated in Kashmir. In democracy it would be inherent nonsense to deny the people to even criticise press and infer that it meant to spread hatred against a government, affirmed Mr. Beg. This meant that this Government had become more delicate than the beloved. Mr. Beg stated that it was District Magistrate who gives licences to papers and consors them - It was a criticism of his action. ----- Sheikh Sahib wanted that the Preventive Detention Act should be revoked. He did not want to have any lawless law in the State. Mr. Beg stated that this lawless law was monstrous in character. Detention is 10 years here and in India a detenu is released after one year. Sheikh Sahib spent 4½ years, G.M. Shah 6 years, G.M. Kara Sahib 6 years, and he (Mr. Beg himself) 5 years in Detention and so on and reached retirement age there.

Court: "Do you say ministers do not retire?"

Mr. Beg: "So far M/s Bakshi, Saraf are concerned, Yes Sir."

It was not necessary for the executive to give grounds when detaining a person told Mr. Beg.

Court: "Is it necessary to give the grounds?"

Mr. Beg: "No Sir, not in Kashmir."

Mr. Beg stated that Kashmir Detention Act was more rigorous and asked whether it was expected that a public man of Sheikh Sahib's stature should not comment on it. Denying the right of criticism was denial of the fundamental rights. Making an exception here alone it meant that people would be governed by abnormal laws, asserted Mr. Beg. Sheikh Saheb did not like people to be governed by abnormal laws but by normal judicial process.

Mr. Beg then read from the Detention Order of Sheikh Sahib and showed that it was not necessary to disclose the grounds on which a person was detained in J&K State for ten years. It always depended on the pleasure of the Government.

This abnormal process of law was dangerous in a State where political party was at the helm of affairs - Sheikh Sahib mourns this tendency which would result in a dictatorial type of Govt. He quoted an example from recent happenings in Jammu when students were subjected to this lawless law and when a normal process of law would have sufficed. Pir Abdul Gani was arrested under Preventive Detention Act. On Habeas Corpus he was released by High Court. But, as soon as he was released by the High Court on Habeas Corpus, from previous detention under this very Act, a fresh order of detention was served upon him.

Mr. Beg pointed out that Kh. Gijam Mohammed Chiken and other 10 detenus were released by the High Court on a Habeas Corpus in 1955 and after two hours interval they were again arrested under same Act. Mr. Beg stated that as citizens they were honour bound to condemn such lawless laws.

Court: "Can you tell me when the Habeas Corpus petition was made by Pir Abdul Gani in the High Court ?"

Mr. Beg: "It was in January 1958." Continuing his argument Mr. Beg stated that the state of mind of Sheikh Sahib meant that law should be supreme and the lawless laws should be wiped out. He deplores as to why the judiciary has been subjected to executive. That was the only way to reform a society. in a democracy Mr. Beg asked that even this kind of criticism was not possible in Jammu and Kashmir State.

Quoting :-

"You must keep your heads cool and try to understand me fully. There was a movement since 1931. People bore lathi charges and bullets many a time. We saw Hari Krishan Koul, Kalvin and Kartar Singh. But the freedom struggle continued..... Muslim Conference became the National Conference. Non-Muslims were invited to join so that we could ~~free~~ this country from an autocratic ruler. It continued for 25 years. The objective was that the people have the right to decide their fate."

Mr. Beg stated that Sheikh Sahib argued his case in forceful logic that people have suffered troubles and tribulations for the last 25 years in order to be the masters of their own fate irrespective of caste, creed and colour. He preaches oneness of man and sanctity of every religion. He advocates the supremacy of vote and not of bombs and bullets. He refers to the Indian Congress which stood by him in this demand that sovereignty vests in the people. "Can it mean that Govt. of India was brought into contempt," asked Mr. Beg. Further Beg Sahib told the court that Sheikh Sahib counts before the lacs the help Panditji gave him in his freedom struggle and also that he even courted arrest for him. He explains the close association with Congress due to close political affinity with Congress programme. He speaks high of the Indian leaders like Rajaji, Panditji, Dr. Ambedkar and others. Did this mean that he spread hatred asked Mr. Beg.

Mr. Beg stated that Sheikh Sahib condemns in this speech the onslaught of raiders who wanted to usurp the right of self-determination. Usurping a human right means usurping human dignity. Perhaps Mr. Pathak had not come across this when reading the speech. Sheikh Sahib here also speaks high of India because India at the time sent her forces to drive the raiders back and defend the right of self determination of Kashmir. What more acknowledgment of gratitude was ^{desired} from Sheikh Sahib asked Mr. Beg. Even Pt. Nehru himself told the World that Kashmiris were not chattel and this was repeated by Sheikh Sahib.

He refers with respectable words to Bakshi Ghulam Mohammed. How all this could be termed as spreading hatred and disrespect asked Mr. Beg.

Mr. Beg told that Mr. Pathak infers that the comment by Sheikh Sahib on the communique of the two Prime Ministers of India and Pakistan provides a thread for the motive of the conspiracy. This was fantastic. Because Sheikh Sahib said that even M/s Bakshi and Sadiq supported this communique of the two Prime Ministers of India and Pakistan. He affirms that what these Prime Ministers say was the only way out of this problem. Mr. Beg stated that five minds (Panditji, Bogra, Bakshi, Sadiq and Sheikh Sahib) agreed on this issue and to term it as a motive for the conspiracy was a preposterous inference.

Mr. Beg then told the court that Mr. Pathak inferred similar words contained in some pamphlets alleged to be from Pakistan and in some letters alleged to be of the accused that they were in Conspiracy. Mr. Beg pointed out that if somebody writes tomorrow that China crushed Tibet it would not be well for Mao Tse Tung to condemn Dalai Lama: Mr. Beg asked if Pakistan demanded a same thing as was demanded by the accused did that mean a Conspiracy with Pakistan. He asserted that it was the other party which gave such opportunity to Pakistan. Ashok Mehta said 'Kashmir's soul is suffocated' and Pakistan used it. Can it be said that Ashok Mehta was in league with Pakistan asked Mr. Beg.

Arguing further Mr. Beg said that world press commented on Sheikh Sahib's detention. Sheikh Sahib in his speech tells the people that he was released due to the pressure of public opinion within and without India. He had many a friends in India. He tells the people that first he was branded as an imperialist Agent and now he was told to be communalist. Sheikh Sahib presents this badly and resents that such elements exploit the name of Gandhiji who gave his life for holding truth high. Sheikh Sahib poses a question and says was that how Gandhi Ji should be followed.

Sheikh Sahib in this speech talks about the irresponsible Press and the way in which the Press resented. Sheikh Sahib's "going to Hazratbal, offering prayers, reciting Holy Qoran etc." Sheikh Sahib then poses certain questions and asks what was meant by nationalism by these friends. Did it mean to give up one's religion? Was it a crime to be a Muslim under present circumstances when it was not so in the disturbances of 1947.

Summing up Mr. Beg stated that they strongly condemn the accusation that Sheikh Sahib had used a derogatory word like "scoundrel" in reference to some person. The record played back here was heard by them and they did not hear any such derogatory words used by Sheikh Sahib as alleged by the Prosecution. Prof. Toshkhani admitted here that he had altered and added and subtracted words himself. In the long hand of the reporter this word does not occur.

Court: "Can you indicate the place where this word could have been in the long hand report of Mr. Tiku."

Mr. Shah and Mr. Lateef read the relevant portion from the long hand.

Court: "How long will you take to dispose of these speeches
Sheikh Sahib: "Mr. Beg is dealing with one speech a day at an average. I think it should take a week more."

Mr. Beg: Definitely I cannot say anything.

(The Court rose for the day)

Issued by
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Copy forwarded to _____
for perusal and publication.

SECRETARY AND COUNSEL,
J&K LEGAL DEFENCE COMMITTEE
JAMMU.

THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ- SRINAGAR.

K A S H M I R

Branches:-

Sgr. 707.

Phone: Jammu. 5133.

New Delhi. 32202.

19TH, MAY, 1961.

1. The Dawn, Canal Road,
Jammu.
2. 81/48, Diplomatic
Enclave,
New Delhi.

THE KASHMIR CONSPIRACY CASE

Resume of Mirza Muhammed Afzal Beg's argument.

Resuming his arguments today Mr. Beg further elucidated the speech of Sheikh Sahib delivered by him on 31 Jan, 1958 at Hazratbal. He said that the word 'Dala', to which the prosecution took objection was not in the long hand report of Mr. Tiku PW. Its limitations have been pointed out and the tape record was not dependable. If there was a contradiction in the two reports emanating from the same source the benefit of the doubt will go to the accused. Another important point worth noting was that the speech was delivered in the most sacred shrine of Muslims in Kashmir. Circumstances would rule out the use of such language. Not a single man raised derogatory slogans there and could this be expected of a learned speaker like Sheikh Sahib. Mr. Beg stated that M/S Bakhshi, Sadiq and Saraf were held in esteem by all of us because of their past association. Sheikh Sahib referred to them in moving terms and thus it was not conceivable that he could have used such terms and expressions. He denied outright the use of this expression.

Quoting from the speech, "They fear that he (Sheikh Sahib) will go to India. They day in and day out quote Gandhiji. Gandhiji gave his life for upholding truth. I ask from his followers what they did with me. They feared that they have no reply. So they made a plan on my release to dub me as a communalist. First I was depicted as an Imperialist Agent. Now I am communalist. They said he went to Hazratbal. Were I to go to a temple or to a 'Bachha Nagma party'. Were then I a nationalist."

Mr. Beg stated that this all proves that the speaker commented on the bad deeds of the authorities in Kashmir and talked about the morality Gandhiji used to teach. He talks in the context of the allegations against him. When various journalists came to him he also told them these very facts. He refuted the charges made against him. Sheikh Sahib asks what was their standard to judge a person's secular outlook. He asked from them all whether raising of the slogan of 'Narai -Takbeer' was communal. Sheikh Sahib wants to know whether he should give up offering prayers, reading Qoran and going to mosques etc and would then he be considered a nationalist. He refers to the crucial test the history put him to and tells the people to judge him by that and not by his mode of worship. Sheikh Sahib refers to the Prophet of Islam because his teachings had taught him brotherhood of man.

He relates historical facts about 1947 when in spite of the slaughter of Muslims in Jammu and other places he stood firm and protected the minority in Kashmir. Mr. Beg asked did this mean provoking Kashmiri Muslims against Hindus and further said that he was the man who fought against two nation theory and converted Muslims Conference into the National Conference at the risk of losing popularity and about whom Gandhi Ji told, "that there was a ray of hope in darkness! Mr. Beg asked could he be called a communalist by those very persons whose hands were drenched with human blood in 1947 killings. He tells these people that he should be tested on the facts borne out by history.

This all was addressed to some newspaper men. It was unfortunate told Mr. Beg that here in Kashmir this could not be even done because that was considered a treason. Sheikh Sahib preaches gospel of tolerance. He resents manipulation of time seekers and diehard communalists who distributed sweets when Gandhi Ji was assassinated. It were these very people who were dubbing him as communalist. He did not agree with such nationalism and secularism. He explains what in fact secularism meant to him one-ness of man and respect and tolerance for other religions and also the protection of minorities as a sacred trust. Mr. Beg affirmed that powerful sermon can be imagined than this and more so when the audience was receptive. It was unfortunate that very opposite view was taken by the other side.

Sheikh Sahib tells that Bakshi alone was not a nationalist. Here Sheikh Sahib comments on individual Bakshi's role and it would be traversity to tell that Bakshi was Kashmir State. He tells about faith and what faith meant to Bakshi Sahib who was telling that Sheikh Sahib was 6 article of faith for him and ^{who} on August 9 ^{the} enacted a coup. Was not Democracy killed in Kashmir on that day asked Mr. Beg? He tells the people that he cannot become like Bakshi.

Sheikh Sahib asserts that he sided with India because India stood firm on truth like a rock. Can such a person spread hatred who compliments India in such a way asked Mr. Beg. Sheikh Sahib states to the people that he knows what Qoran means and says that a promise was always a bilateral thing. He requested India to have enquiry to see as to who has backed out he-or India herself. He tells India that due to green light in August 9 from Delhi he and others were arrested and the constitution subverted. Brute Force was used and those very persons were killed who had great love for Pandit Ji. There was no moral justification for that. Mr. Beg asked, "Had he to keep mum and not talk anything about murder of Democracy and of human values?" Mr. Beg repudiated the charge that Sheikh Sahib was obsessed with the idea that he was dismissed on August 9.

When Mr. Beg referred to the men who had gone to Kohala to stage a demonstration against Pandit Ji and began explaining it, the court took an objection to that as it was not relevant.

Mr. Beg: I shall show from Mr. Pathak's arguments as to how he used to quote passages and the court never objected.

Continuing further Mr. Beg stated that Sheikh Sahib was dubbed as an Imperialist agent and he had to explain this charge. Those forces who leashed 9 August drama called him Imperialist Agent. The executive head in India was Pandit Jawaharlal Nehru and this happened in his very time. Was it treasonable to address Pandit Ji and to tell him why such a thing was done. He relates the close association he had with Pandit Ji. He tells how Congress stood with him and supported him against autocratic rule. Can any person who acknowledge with gratitude the help India, Congress ^{and} Pandit Ji gave to him be accused of spreading hatred against India, asked Mr. Beg.

Sheikh Sahib asks India as to why she was ~~resiling~~ from her stand and not honouring her own pledges. He tells India that under such circumstances how can relations remain cordial and permanent. Without accusing any government he asks why should the basis of friendship be knocked of. Sheikh Sahib asserts that he was not changed.

Mr. Beg said that Mr. Pathak had inferred that, "this is clear that he wanted to break relations with India." and exclaimed that this inference was absolutely unwarranted. No body could say that they had ever asked anyone to vote this way or that way, asserted Mr. Beg. This very inference was obsessing the Prosecution mind and therefore, this whole case had been manufactured. Mr. Beg asserted that whatever might be the case or whoever might judge them, they would tell the truth. Mr. Beg stated that there were organisations and public men who were in favour of Pakistan but Sheikh Sahib was being tried, because the Prosecution was obsessed with the idea that he would not vote for India.

Mr. Beg affirmed that Sheikh Sahib appaulded Pandit Ji for the help he gave to him in the freedom movement. Did that mean to create revulsion asked Mr. Beg. Sheikh Sahib tells the people that he has only one criteria of friendship and that was the acceptance that the people alone were supreme. Mr. Beg said that this exactly was the Congress ideology. How could this create hatred against India? asked Mr. Beg.

Sheikh Sahib wants to know the reasons that why this right was denied to the people of the State. Sheikh Sahib asserts in his speech that in spite of the false accusation that were hurled at him the right of the self determination of the people would be accepted one day or other.

Referring to the inferences drawn by Mr. Pathak that, "If

Government of Kashmir did not engage itself with the plebiscite, was enemy." Mr. Beg stated that this was most ridiculous inference. The question of accession was not left to Kashmir Constituent Assembly by the Government of India itself. That was the height of imagination only stated Mr. Beg. Commenting further Mr. Beg said that this was an address to Pandit Ji and the Government of India and not to Mr. Bakshi and Mr. Bakshi never meant J&K State.

Mr. Beg also stated that the inference drawn by Mr. Pathak that because Pakistan supports the Plebiscite, therefore, if Sheikh Sahib meant that it was a friendly country. Mr. Beg with due deference said that it was wrong to say that because America supports the plebiscite therefore accession will be made with America. Mr. Beg said that Mr. Pathak infers that through a plebiscite people will be led to Pakistan and that showed the conspiracy." Mr. Beg asked whether advice of adopting peaceful means to solve Kashmir dispute amicably between India and Pakistan amounted to a criminal act.

Quoting:

"We are fighting a war of human values. No question of Sikh, Hindu, Muslim arises in it. When I demand this right, I do not demand it for Muslims alone but for Hindus and Sikhs alike. If we are dubbed as communalists on this ground how can I help it.....we started a movement and gave sacrifices. Some friends say that India is a big country. She has Army and money. Such and such country supports her. This is said only with the purpose that your determination may become weak. But he who has trust in God and his Prophet does not fear power and might. He smilingly offers himself like Imam Hussein for these sufferings in order to keep truth high. A Momin never bows before untruth.....Therefore your determination should remain firm and strong. So far this dispute is not settled peacefully, Pak-Indo relations will not become amicable."

Mr. Beg stated that here Sheikh Sahib repudiates the charge of communalism. He advises the people to be calm and cool and determined to achieve their object. He does not depend on power and Army - He wants people to have complete faith in God and offer all sacrifices like Imam Hussain to uphold the truth and never to bow before untruth. He rules out the faith in material power, gun cotton slabs, booby traps etc. He tells India that Kashmir would always endeavour to force, India to stand firm on her own commitments. He talks about uncertainty because this has disrupted the State, dislocated many a homes, spread terror far and wide and let loose forces of repression and harassment, told Mr. Beg.

Sheikh Sahib asserts that the solution of all these ills was the resolution of this dispute. Mr. Beg stated that intention of Sheikh Sahib was to bring home the hard facts of this question. Some say that why Sheikh Sahib did not refer to Pakistan. Mr. Beg refer to

stated that it was India alone^{which} pledged for plebiscite. If India wants, it can get Pak Armies withdrawn and then the second provision of plebiscite will become operative affirmed Mr. Beg.

Sheikh Sahib impressed on people that such problem were not solved by abusing^a country. He was against the cold war affirmed Mr. Beg because that would jeopardise the International peace. That was the opinion of the Security Council and many important statesman of the World. Mr. Beg refuted all the inferences drawn by Mr. Pathak. Mr. Beg stated that Sheikh Sahib enjoins upon every patriot to solve this problem by friendship and amity and not by the power of sword. Sheikh Sahib rules out the idea of getting the government back.

Summing up Mr. Beg stated that crux of his speech was that the question should be settled by the people themselves and not by a few individuals, who he teamed as "Pech Dar" men of no locus standi.

Court: "Pech in Kashmir is grown on floating earth and that means those who are without roots.

Mr. Beg: "Pech Dar" means men of no locus standi. Sheikh Sahib wants that all the people should take part in deciding the future affiliations of their country. Sheikh Sahib tells the communal organisations that he would always remain steadfast inspite of their opposition. He would uphold the right of self determination for the people of the State. He asks M/s Bakshi/Sadiq to ask their own constituents as to what they want. Every one wants the right of self-determination for the people, and Sheikh Sahib asserts that this right cannot be refused by any one. Mr. Beg referring to the inferences of Mr. Pathak, in saying that, "he would not hurl abuses on Pakistan, he was conscious of the fact that he hurled abuses on India." affirmed that it was a strange logic. He asked, "if a man did not abuse any other person does that mean that he was abusing some other man." Sheikh Sahib emphasises on the minds of the authorities to restore law and order and to respect rule of law. Mr. Beg asserted that his speech was a sermon on spiritual values of the life wherein he had condemned evil designs and use of force. He has preached the use of peaceful means for resolving the Kashmir Dispute which alone would ultimately bring amity between India and Pakistan and remove uncertainty from Kashmir. Even a far remotest hint about the use of force; violence; overthrow of Kashmir Government and the annexation of Kashmir with Pakistan was not contained in this speech.

Mr. Beg stated that the general inference was that the Prosecution Counsel had given the real mind of his client which was working behind this case viz. that probably if plebiscite was held people would vote for Pakistan. Actually that was the reason for this prosecution otherwise there had been no

use of violence, no intention to overthrow the government and design to annexe Kashmir with Pakistan.

A F T E R T H E B R E A K

Resuming his arguments Mr. Beg referred to the speech No. 269/E/1 delivered by Sheikh Sahib on Feb 16, 1958 at Hazratbal. He stated that this speech related to famous Muslim festival Miraj Sharif a sacred occurrence connected with faith of Muslims which was mentioned in the Holy Book. On this day Muslims assemble in Hazratbal where there was a relic of the Prophet of Islam. Here Sheikh Sahib addressed the people and taught the Philosophy of Meraj (elevation of man)

Mr. Beg then referred to the slogans appended on the top and told the court to note that there was no derogatory slogan gave any indication that the people were in violent mode.

Referring to the opening para Mr. Beg stated that there were references to Prophet of Islam alone. It was a introductory speech made by Abdul Rahim Bandey who used to pray for the long life of Sheikh Sahib and other detenus. It should be remembered that Sheikh Sahib set up the Aqaf organisation at Hazratbal and so Mutawalis used to pray always for long life and prosperity of Sheikh Sahib.

Referring to the speech Mr. Beg told that in this speech Sheikh Sahib explained two, side of man's life- physical and spiritual. One wants comfort and the other wants to rise above towards Almighty. Sheikh Sahib tells people that who seeks physical life goes down and down and who makes the spiritual values supreme gains self realisation and salvation which could be achieved by service to God and meditation. The soul becomes purified and thus man attains Meraj. This was the stage when manifestations of God were revealed.

Quoting:

"Soul is beautiful and is delicate. But when this body remains engrossed in meditation and worship it becomes just like Soul. It becomes a real gem. At this time the manifestations of God are revealed to him. This is called Miraj."

Mr. Beg stated that Sheikh Sahib preached this so that they could purify themselves for achieving salvation. The contents refute the charges of hatred, violence, contempt against any one. He preached human dignity and says that man was above the angels. Mr. Beg stated that this was common to all religions, which believe that man was the manifestation of God. Quoting:

"Mohd. Mustaffa was a perfect man. Many a prophets came and they were for various nationalities. Prophet Mohammed was for whole universe. He was sent for the guidance of all. His follower must also be complete and high."

Mr. Beg stated that Sheikh Sahib said that various religions were for different nationalities but Prophet Mohammed was for whole universe and that shows that he preached human brotherhood and no hatred or ill will against

He preaches to the audience that the perfect man has control over his body and soul. This Mr. Beg affirmed was meant to bring the people under complete discipline -mental and physical.

Citing from the Holy Quran, "Do not spread mischief on the land. God does not love those who spread mischief," Beg Sahib told that Sheikh Sahib wanted to enjoin upon the people to have full control over the body and the soul and do not spread mischief on the Earth because God does not love those who spread mischief. Mr. Beg stated that the prosecution suppressed these verses here in the court. He advises the people to follow this path of Prophet. Sheikh Sahib tells his audience that the 'prayers' were a best present brought by the Prophet from God. They should offer : 5 prayers every day. That was the way of salvation. Mr. Beg asked, "Was this the preaching of chaos, confusion and clash."

Quoting, ".....Have faith in God. You will become friends of God. Quran is full with advice for good things in this life. We do not obey its behests. Prophet strictly adhered to the behests of God and He became perfect man and attained Meraj."

Mr. Beg stated that here was the absolute renunciation of material means. To reach to that stage prayers were essential because these also keep greed in control and save the man from derailment. Greed was the great enemy of man. Sheikh Sahib advocates that the sense of greed and wish for the evil must be suppressed. He insists on prayers and prays that God may purify all. Mr. Beg stated that a map of war and evil designs would never speak in this way and would never wish well of the whole humanity. He tells the audience that if they were facing hardships and sufferings it was due to their own fault and bad actions.

Sheikh Sahib tells the people that when the actions would be pure and good all their sufferings would end and God would grant all what they demanded. Mr. Beg stated that prosecution took an objection to the use of word 'DAJAL'.

Quoting, ".....On one side was Dajaliat (evil force) to defeat the truth and making the falsehood successful. There was oppression, torture, privation, lending money and stopping rations. It was to force the people to side with untruth."

Mr. Beg stated that Dajal was not anti-Muslim. Dajaliat means mundane life which desires for worldly gains, comforts and luxury. In principle Sheikh Sahib said that this was inherent in every man.

Court: What is the meaning of Dajaliat ?

Mr. Shah: It would mean the forces of evil inherent in every man.

Sheikh Sahib: "In Scriptures and Quran it is said that during Kaljog a man will rise and lead the people to evil. He is called Dajal and Dajaliat means forces of evil trying to mislead people from the path of truth. In Hindu philosophy it is also believed that such forces will rise."

Mr. Pandey: Does it mean Wahdaniyat?

Mr. Beg: Mr. Radha Krishan must be knowing what is Dajaliyat.

Mr. Shawal: Silence is significant.

Arguing further Mr. Beg stated that this would have the meaning he would have understood if he had heard this. He turned it as gross perversity to refer dajaliyat to mean a thing anti-Islamic. Mr. Beg said that every religion has forces of evil. Billions are spent on rockets and millions of people are starving. This all was evil and if some good would out of Geneva Conference won't that be good asked Mr. Beg. - ever may be the case Mr. Beg asked was there any reference in sentences to Bakshi Sahib and to anybody else.

Quoting:

"The work they are doing for the last 4½ years has not proved bad for them alone but for all and India also. Time is coming when they will repent their bad actions. They are trying to disrupt the society. They tried that two communities should fight. At this time they are trying Shias and Sunnies should fight. I request you to remain united. When unity will be amongst you then all sufferings would end. God has kept the door open for Miraj."

Mr. Beg stated that Sheikh Sahib condemned evil forces and much more the atrocities to which people were subjected to. Mr. Beg stated that the evil forces were leashed to such an extent that ration cards of his family and others were stopped. In Jammu Praja Paraished was also subjected to it. Mr. Beg asked that can criticism of this fact be termed as treason. He then referred to molestation to which Sofi Sahib and Mohiuddin Shah were subjected. Central Interrogation was an agency of evil and if that was criticised did it mean treason asked Mr. Mr. Beg. Sheikh Sahib had explained ^{this in} a philosophical way and told the audience that when a man forgets his spiritual values he inflicts sufferings and troubles on others.

Quoting:

"I request you to follow Prophet Mohammed. All your sufferings will end."

Mr. Beg commented that Sheikh Sahib preached that the people should show patience and should remain steadfast on truth and seek help from God which was sure to come from Him. He warned people that if they left this path of righteousness they would meet with same fate as did other nations in the past who led evil lives.

Sheikh Sahib tells the people that in this way alone Kashmiris, including Sikhs, Hindus and Muslims would not be annihilated.

Mr. Beg requested the court to note that this was a very important piece of evidence coming as it did from the prosecution document itself.

Sheikh Sahib warns the friends who support the force of evil that it has been bad for them and for India. He wants to stop these things. Mr. Beg asked can this be termed as preaching hatred against India. Sheikh Sahib tells the people that somebody tried that there might be clash in the two communities and this was done before also. He condemns these actions of evil doers. This would have been disastrous. Mr. Beg affirmed that he alone would say such things who was interested in the peace of the country. Sheikh Saheb refers to British Imperialism which acted upon divide and rule. He enjoins people for unity and advocates that all will end if people would offer prayers because the doors of salvation were open to all. Prayers alone could achieve salvation for a man. Mr. Beg stated that Sheikh Sahib bemoans that the path of Prophet had been given up. Mr. Beg asks whether there was any indications to overthrow the Government, use of force and annexe Kashmir with Pakistan.

Further Mr. Beg told the court that Mahatmaji preached same lesson which Sheikh Sahib gave in this speech at Hazratbal. Mr. Beg stated that no inference whatsoever can be drawn that he preached use of force, violence, and overthrow of Govt. and annexation of Kashmir with Pakistan.

Closing the arguments Mr. Beg said that the prosecution may not agree with what Sheikh Sahib preached but the fact remains that his speech impressed on the people the superiority of moral and spiritual values and this speech was full of advice for the people to reform themselves according to the teachings of Prophet Muhammed so that peace and human brotherhood would prevail.

(The court rose for the day)

19th May, 1961, The Dawn,
Canal Road, Jammu.

(G.M. Shah)
Secretary,
J and K Legal Defence Committee.

Copy forwarded for perusal and publication to _____

Secretary,
J and K Legal Defence Committee, Jammu.

THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
Srinagar.707.

Phone:- Jammu.5133.

New Delhi.32202

SHAHEEDUNJ - SRINAGAR
KASHMIR

20TH, MAY 1961.

Branches:-

(1).The Dawn,
Canal Road,
Jammu.

(2).81/48, Diplomatic
Enclave,
New Delhi-21.

THE KASHMIR CONSPIRACY CASE.

Resume of Mirza Muhammed Afzal Beg's arguments.

Resuming his arguments today Mr. Beg stated that as prosecution had requested to take the overall picture therefore it was necessary to take the overall view of this speech also.

Mr. Beg stated that Sheikh Sahib told his audience that there were two sides of a man, physical self and the spiritual self. Former was a baser one and the latter nobler one. Both were present in every man. Spiritual self raises a man very high and keeps the physical self under control. This could be obtained by meditation, prayers and obedience to God. That would be the Meraj or the Doctrine of Nirvana. He referred to the Juda philosophy, Christian outlook and the Hindu philosophy and said that that was the teaching of all the reformers and this was the sermon Sheikh Sahib gave for the unity of men and brotherhood at Hazratbal. The inferences drawn by the prosecution were most unfortunate. Sheikh Sahib deduced from this that means to achieve salvation were five prayers a day. Incidentally he refers to the important fact that this nation would not go down. This was the cherished wish of a noble one who advocates complete unity. Sheikh Sahib tells people that by observance of Namaz they would be freed from all the troubles.

Mr. Beg then referred to Exp. 269/D/1, Sheikh Sahib's speech which was delivered on 21st February, 1958 at Hazratbal and said that the first portion -2 was the Salam to the Prophet of Islam. The speaker refers to Kh. Abdul Rahim Bandey and acknowledges his services who stood firm on the truth. Kh. Sahib held a very high position in Kashmir. There was no evidence on record that Kh. Sahib participated in political activities. He used to pray for the detenus and prisoners. A muslim was enjoined by Qoran never to forget those who were orphans and in prison. This Government did not like and he was subjected to pressure. Sheikh Sahib recognises this noble action of Khaja Sahib and the righteousness on which he stood firm. He did it on the teachings of the Qoran. Khaja Bandey pays compliments to Sheikh Sahib and then Sheikh Sahib's speech begins. He tells the people about the sad news of the ^{illment} of Maulana Abul Kalam Azad and then

then refers to the services Maulana Azad rendered to India and its people during freedom struggle against British Imperialism and also to his scholarship in Islamic literature and history. Recounting his great sacrifices and services Sheikh Sahib requests the audience to pray for his recovery because his loss would be irreparable for the country and cause of secularism.

Court; Prosecution have not objected to this part of speech. Why repeat it?

Mr. Beg: They have not objected. They have deliberately suppressed it so that their unfounded inference may not stand rebutted.

Court: Why should you insist on it.

Sheikh Sahib: The prosecution had requested you that overall picture should be kept in view. This is possible when the whole speech is kept in view. Sentence torn off from the context and joined together for making an inference is not justified. Such portions have been purposely suppressed.

Mr. Beg: How can anybody stop me. That will result into very grave consequences. Continuing onwards Mr. Beg stated that this reveals the working ^{of the mind} of Sheikh Sahib about the troubles of his colleagues in various jails. He prays that God may grant them strength to bear this all and also God may grant that which would be good for the country and the people.

Quoting:

"God on Miraj gave a present to Prophet Mohammed and that was Nimaz. That was the biggest present he brought from God.....and also Nimaz tahjud. A Musalman should also offer Nimaz tahjud. This leads to spiritual progress. And Allah grants a man highest citadel of human dignity. Prophet attained this highest spiritual position by offering tahjud prayer.

Mr. Beg said that Sheikh Sahib again refers to the Nimaz. It would be wrong to wrench certain sentences from the context ^{comments} asserted Mr. Beg. Sheikh Sahib on Nimaz and elucidated various forms of Nimaz which bring for a man the highest spiritual attainment. He tells people that this could be achieved by tahjud and therefore insists people to offer prayers regularly and tahjud as well.

Court: What is Tahjud?

Mr. Beg: Special prayer of the night. Sheikh Sahib explains how a man attains salvation and the purification of mind by Nimaz. He impresses upon the people that by Nimaz alone the people can be freed from all sufferings and troubles.

"Many a great kings came. Alexander, conqueror whole world. Chengiz and Napoleon were also great conquerors. But they could not conquer

the hearts of people.....Prophets alone conquer the hearts.They had neither treasure nor swords with them.Christ is still loved by crores of people.People have love for the Prophet of Islam even though 1400 years have passed.He had won the hearts of the people in such a way that he would be remembered till eternity.."

Quoting the above Mr.Beg stated that Sheikh Sahib refers to evil forces who came in the garb of Changaiz, Napoleon etc and elaborates that in spite of their greatness and might they could not conquer the hearts of the human beings.His insistence was on the means. This was always preached by the Indian leaders.Particulary Gandhiji told the British that they may conquer them by sword but they will not conquer their hearts.Sheikh Sahib tells the people that Prophets and reformers alone could conquer the hearts.He condemned the use of power and sword.His condemnation for these means was obvious.Sheikh Sahib was dedicated to non-violent philosophy from 1931.He denounces the evil means.He shows respect for other religions.To tell that such a man was preaching hatred was a twist most unfortunate told Mr.Beg.The result of this preaching was that people remained calm and cool.

".....God has distinguished a Moomin and a Kafir. Moomin is he who offers prayers with concentration.Who guards five prayers is a Moomin.See for yourselves whether you are Moomins .If you are not then let us pray because this is the time for prayers.God enjoined upon Prophet to offer prayers.How many amongst us do offer prayers.....Everybody wants freedom from suffering.May God grant us our objective. For achieving an objective there is no need for army,ammunition,sword.Only Nimaz would suffice...."

Quoting the above Mr.Beg commented that Sheikh Sahib told the audience that only name did not make a man Musalman but he must dedicate himself for the service of God.Moomin was that who believes in oneness of God.Moomin was one who has faith and Kafir neccessarily does not mean a Hindu, affirmed Mr.Beg.This was a misnomer.Sheikh Sahib told that among the Muslims there were non-muomins.He tells them that they should here in this sacred place offer penance and repentance.He refers to the sufferings of the last five years.He tells people that on Aug 9, a blow fell on the Muslims."Unfortunately Muslimans are looked as suspects," asserted Mr.Beg.Beg Sahib termed it a greatest degradation and said that it still continues.

contd.on page4.

He tells people that on August 9 a blow fell on the Muslims. "Unfortunately Muslims are looked as suspects asserted Mr. Beg. Mr. Beg termed it greatest degradation and said that it still continues. Sheikh Sahib again advises people to take recourse to truth and Nimaz- that alone was the way of success. Referring to these unfortunate conditions Sheikh Sahib enjoins on people that no army or force can help them but only trust in God and offering of 5 prayers. He completely denounces the use of force and violence. Its main merit was that it was addressed to muslimans, a predominant majority in Kashmir and at the shrine for which muslims had great respect, asserted Mr. Beg.

"We are in a struggle for the last 25 years. There is a clash between Haq and Batil (truth and untruth). From 5 years there has been much harrassment. Every Muslim is involved in this harrassment. Every one wants this should end. Allah says that if you want that the anxiety should end then you should offer 5 prayers a day.

Quoting the above Mr. Beg said that Sheikh Sahib gives the history of freedom struggle against Maharaja and other Indian States. Particularly he refers to the last five years troubles and hardships faced by the people and again he emphasised that inspite of it they should keep offering 5 prayers. He did not tell them to go into booby traps and the gun cotton slabs asserted Mr. Beg. He, (Mr. Beg) asked the court to note that this day was 21 February when Prosecution had reached the conclusion that there was a conspiracy. Sheikh Sahib on this very day preached moral values and stressed the need for remaining calm and cool and peaceful in troubles and tribulations. Sheikh Sahib tells the people to be patient and revert to God for help and pray for the end of these sufferings. He tells this to the Muslims whom it had been alleged that he tried to excite. Mr. Beg asked "can this myth be believed by any reasonable person." He asserted that great responsibility devolves on this community in Kashmir and they were satisfied that they kept their heads cool and calm always and stood above the communal considerations. Mr. Beg affirmed that there was an unprecedented mammoth gathering on this day and Sheikh Sahib taught a gospel of love and brother hood.

"What is difference between a Momin and Munafiq. Munafiq is that who becomes lazy while doing God's work. To give up Nimaz is an indication of "Kufir"- disbelief.....Kafir will be in hell. God will ask him why are you here. He will say I did not offer prayers. Have self-retrospection always....." who gives Nimaz up, his faithfulness ends.

Quoting the above Mr. Beg stated that distinction between Momin and Kafir should be noted. Sheikh Sahib tells about a (Munafiq) double dealer, who becomes lazy and according to God whoever gives up Nimaz is Kafir.

One who does not obey God was a Kafir even though he may be a muslim by name. So symbolic nomenclature does not make a Muslim a Muslim affirmed Mr. Beg. Sheikh Sahib enjoins people to become true Musalmans. He tells the people to offer prayers if they want that their hearts should become pure. Prayers alone were the means of attaining purity of mind and heart.

"It was the time when Prophet left Meccathe condition of Musalmans was very bad. Then Miraj happened. The clash between good and evil is from that day.....God tells the characteristics of a seeker after truth.....In the end truth alone will succeed."

Quoting the above Mr. Beg stated that Sheikh Sahib tells the people that they should remain firm on truth and follow truth. He counts the following qualifications of "Haq Parast" Y_____ seekers of truth. He obeys. No question of colour, caste, culture, geography arises therein. He is obedient to his parents.

It was unfortunate that Prosecution said that even this passage was not for moral education commented Mr. Beg. (3) He prays for mercy of his parents and (4) realizes his obligation towards the neighbours and safeguards their rights. Can it be termed to teach communal hatred asked Mr. Beg. Sheikh Sahib enjoins upon people to keep seeking truth. Mr. Beg stated that this was the Panch-Sheel which Sheikh Sahib preached. This clash between truth and untruth would always be there. Mr. Beg asserted that in a secular state preaching of one's faith cannot be banned because that would be unconstitutional. A leader never feels funky to tell bold things to the majority community and asserted Mr. Beg. That brought dividends in 1947 when Sherwani/Abdul Aziz gave their lives for protecting the honour of the minority community in Kashmir.

"On one side is Moses and on the other Pharaoh. On one side is Shabir and on one side is Yazid. On one side is truth and on another untruth.....Iman Hussein gave his life in Karbala and despotism ended for ever.....we should bow before God alone."

Quoting the above, Mr. Beg stated that Sheikh Sahib referred to historical events and explains what befell to the seekers of truth and by their sufferings alone they uprooted the forces of evil. Mr. Beg stated that if one teacher, judge, professor and doctor compromises his dignity to appease a political or a political minded minister it would be termed as an abnormality. Sheikh Sahib relates how Imam Hussain told Yazid that he was not on the right path. He was threatened with death. He subjected himself to that but did not compromise with the dignity of man and truth. Does this mean to disobey law as inferred by Mr. Pathak asked Mr. Beg. Sheikh Sahib tells all to do their duty according to honesty. This lesson was for all irrespective of caste, creed and colour. Everyone could have gained from it asserted Mr. Beg. He emphasises what moral force meant and tell the audience to realize their lapses. He tells the people to follow Imam Hussain if they want to understand the

secrets of Holy Quran. Hussain bowed before none but God even though he lost his head. Mr. Beg asked could this mean by any stretch of imagination to spread hatred and a disaffection.

Mr. Beg stated that Sheikh Sahib explains to the people how forces of evil, in the end were annihilated. He tells that the recognition of Self-determination was the anchor sheet of the United Nations Charter because this would alone guarantee the dignity of Man. Mr. Beg said that had this been recognised for Africa, Algeria, Congo and for the other places, much of human blood would have been saved. It cannot be an irrational thing affirmed Mr. Beg. Sheikh Sahib tells the people that his objective was to achieve this right by peaceful means and not to get the chair of Premier or any lucrative post. Mr. Beg asked "was this treason?"

"..... the people want to go forward. Some create impediments... This clash is not new from 1931 we are in this struggle... You should not become dejected. We want right of self determination. Only complete faith, continuous effort and love will achieve our object."

Quoting above Mr. Beg stated that Sheikh Sahib whistles down the importance of clash between truth and untruth so that feelings were not excited. He tells the people that ministership was not the goal but self-determination. Frustration should not effect the people as it did to others. He tells people that they should suffer for achieving this right and not retaliate by some other evil means. Mr. Beg stated that today every one was proud of corruption and that was the depth of degradation to which the society had fallen. Man by courage of his conviction reaches heavenly heights. Mr. Beg said that here Sheikh Sahib did not preach violence. He enjoins upon the people that swords and manoeuvres do not help people in getting the freedom. It is only the fervour of the faith that gives the freedom. Sheikh Sahib condemns sword as an arbiter. Slavery can have all shades mental, physical etc, affirmed Mr. Beg. Sheikh Sahib condemns all such kinds of slavery. By mental slavery people have become apish and by physical slavery self-determination has been denied, commented Mr. Beg. Sheikh Sahib tells the people that fate of countries was changed by one look of a Moomin.

Mr. Beg asked did not Gandhiji change the faith of 40 crores here in India. Sheikh Sahib advocated that unflinching faith, continuous effort and love could alone conquer the World. These were the swords of those who seek truth. /and Sheikh Sahib did not talk about booby traps, gun cotton slabs. He tells the people that they should not be nervous because they have no army, police, guns and gold. They should have faith in God and truth. Mr. Beg asked can such a man be accused of using booby traps, gun s cotton slabs and conspiracy

that

with Pakistan to overthrow Kashmir Government and annex Kashmir with Pakistan, /was fantastic asserted Mr. Beg. The unique merit of this speech was that ethics was taught on Meraj affirmed Mr. Beg. Sheikh Sahib denounces repeatedly evil means because that shows the intensity of faith he has in God asserted Mr. Beg. He preached that the Momin should not hate anyone. Momin wishes well of every one. Unfortunately this was suppressed by Prosecution affirmed Mr. Beg.

Mr. Beg stated that Sheikh Sahib tells the people that no one can change their condition while sitting in Delhi and Karachi. He told the court that even Panditji told this but when Sheikh Sahib tells the same thing he was tried for treason.

"This mamoth gathering of Kashmiris proclaim that until this question is solved by some peaceful way, the uncertainty will not end."

Quoting the above, Mr. Beg stated that Sheikh Sahib tells people that till this Kashmir question was not resolved, uncertainty, instability, mental and economic chaos would not end. He tells the world that this question was a danger for the peace of Asia and even world. He advocates that the parties should concede the right of self-determination ^{or} give an alternative so that this too question was settled once for all. Sheikh Sahib did not close mind. Misfortune was that a man of such elastic mind was being condemned said Mr. Beg. Mr. Beg affirmed that CA had no power to decide any thing about the future of the State because people were not behind this constituent Assembly. Mr. Beg told that this case was result of those manouvers by which certain persons were pitchforked into the offices and to whom fresh lease of life was given in last elections when almost all the accused were kept in detention.

Mr. Beg stated that Sheikh Sahib takes a vow from people to keep the struggle of peaceful and ^{bear} sufferings. This excluded any thought of retaliation. That was the concept of "Qurbani" sacrifice which Sheikh Sahib preached. He stresses in this oath that this freedom struggle will remain above communal considerations and will remain scrupulously non-violent and true.

He tells the people that this alone can be achieved when people would purify their souls and this purification can only be obtained by ethical means. Mr. Beg asked can this be called preaching of violence, use of force etc. Sheikh Sahib enjoins upon the people to give up the extra-vagance and remain contented in times of financial and economic difficulties. Can a man who spreads hatred and disaffection as alleged preach this gospel of moral values.

Sheikh Sahib then talks about National Conference and recalls as to what has happened to that great organisation which was a beacon light in the freedom struggle. Mr. Beg asked whatever may be case ^{the} criticism of the National Conference be termed as high treason.

Mr. Beg stated that the prosecution had given a mischievous meaning to the word Razakar. He said that it meant 'Seva Samiti' and it was unfortunate that if the name is Razakar it becomes a violent organisation and if it was named as Seva Samiti it became a peaceful organisation. Summing up Mr. Beg told the court that this speech taught ;

(1) Nonviolence ; (2) Spiritual Values ; (3) love and (4) Self-purification. It completely denounced the use of arms, police, force, bombs and war material.

AFTER THE BREAK.

Resuming his arguments Mr. Beg stated that he wanted to give some references from evidence as well. He told the court that these slogans in this speech should be noted. None was derogatory; more so when document was prepared by ~~R.W. Phinself~~ ^{R.W. Phinself}. Whatever was being now told after a period of three years was not worthy of credit. Document alone is the basis of evidence. Prosecution have sought to make from the comparison of Pharoah and Moses that there was a clash between Bakhshi Sahib and the accused. Mr. Beg told the court that the speaker mentions Moses and Pharoah, Shabir and Yazid and symbolises two forces of right and wrong which were apparent in the scheme of life itself. Life is dynamic. If it would be static then it would not mean life. It could not be applied to Bakhshi Sahib and Sadiq Sahib. It applies generally to the scheme of life. Similar was the teaching in Geeta which tells that forces of good and evil would remain in conflict always.

Mr. Beg pointed out that there was not one word to support the allegations under Section 121-A that as a result of this speech there was a riot. Mr. Beg told the court to take judicial notice of the following ; 'the speech ended at 2-P.M.. The people went in for the prayers. There was ziarat and that followed Asar Prayers and then Salam. That took some three hours, according to the prosecution itself. During the Salam, in that milling crowd every devotee wanted to have the glimpse of the Prophet's relic. Prosecution counsel argued that soon after the speech there ~~2-4~~ was a clash. Mr. Beg affirmed that circumstances deny this allegation.

Mr. Beg stated that the court here was told that men like Sofi Mohammed Akber, ex-M.P. aging and ailing whose life was dedicated for upholding secularism led a crowd. Kh. Ali Shah ex-Deputy Minister about whom Mr. Beg hardly gets a glimpse even in jail, Maulana Mohammed Saeed Masoodi, Ex. M.P. who suffered greatly for upholding the ideals of secularism high ~~as~~ and Gulam Qadir Buth, Ex-M.P. who made

possible for the Indian Army to reach the farthest ends of Leh and Kargil where today India was being threatened by another country, Ghulam Mohammed Chikkan who rehabilitated uprooted population in Baramulla; Mr. Hamdani an Ex-Deputy Minister who will not kill a fly and in the amount of physical courage would run away before a mouse even and scores others of high reputation and character, led this crowd and the result was the death of some Mr. Bandey. Mr. Beg termed this allegation false and said that it was the brain wave of CIA and National Conference. Sheikh Sahib's speeches itself bile it.

Referring to PW 138 Shri Kanth, a police officer present at Hazratbal Mr. Beg said that this officer after his observation at Hazratbal and investigation of that case deposed in his cross-examination that he did not mention in his report that Hamdani Sahib, Sofi Sahib Kh. Ali Shah, Peer Yalgani, Mirza Sahib and Mohiuddin Shah, were present in Hazratbal at that time. And he also says that he has not mentioned anything about the slogans, "Bakhshi Wazarat Murdabad etc." or written words "clash between Haq wa Batil" or the story of Moses and Pharaoh. He further stated that Sheikh Sahib was abettor and he did not arrest him because Sheikh Sahib was not there at that time. Mr. Beg stated that the mention of the names of Sofi Sahib and others was an after thought otherwise he would have mentioned these names in his report. He knew who committed the offence. He collected the evidence and he would have told the court who were the real persons. He could not have dropped this very important fact from his records when he was an eye witness. He could not have to have noted them. The inescapable inference was that he did not write in his report about those who were not present there. He has referred to certain derogatory slogans which it was alleged to have been raised in Hazratbal.

He has not mentioned them in his report, thus they were the result of his imagination. Shiv Nath Tiku records all the slogans and thus refutes this PW's story. This PW alleges that Sheikh Sahib abetted the offence because riot was a result of his speech. When asked why did he not arrest Sheikh Sahib he says that Sheikh Sahib had left. Mr. Beg asked who had not left. All the accused had left and they were arrested at their own places. This shows that this story was concocted. The real fact was Mr. Beg said that the speech had nothing to do with Hazratbal rioting. It was the result of National Conference and the police conspiracy against the accused.

Beg Sahib then took up Exp 267 /F/1 a speech of Sheikh Sahib delivered at Hazratbal on 28th February 1958 said that here Sheikh Sahib mourns Maulana Azad's loss and death of Maulana Madani.

"Last week a strange thing happened. Our workers were arrested in the city and in villages.....Sofi Sahib has been arrested.Do not depend on rumours. Depend on Holy Qoran. Musalmans live same life as was lived by Muslims in Mecca. Be steadfast in support of truth.....God helps truth always.....Bear all troubles with patience. The question is very intricate. It requires patience."

Mr. Beg, after quoting the above, stated that Sheikh Sahib tells the people how circumstances were created and how Hazratbal Incident was manufactured. He tells the people to be calm and not to lend their ears to rumours. He tells people to depend on God and seek guidance from Him. This passage has been referred to by the prosecution and Mr. Beg requested the court to concentrate on it and point out one word which can mean that force should be used or that the speaker was exciting the people to overthrow the Kashmir Government. Sheikh Sahib enjoins upon the people to spread the truth every where. This gospel was preached on the day of greatest provocation when hundreds were arrested and worst type of tortures were inflicted. This background needs minute consideration.

Sheikh Sahib enjoined upon the people to depend upon prayers. Prayers became his watchword for his own self and the people alike. Mr. Beg asked could this be read in terms of booby traps, gun cotton slabs etc. Sheikh Sahib asked the people to ponder over it in patience and fortitude. He tells them not to get excited. Patience alone could solve this problem. Mr. Beg asked could a man who believes in spreading hatred as alleged preach such things. Sheikh Sahib re-emphasised oneness of God;

"..... Imam Husaain offered his life in Karbala..... He always upheld the rights of his neighbours. This would entail hardships but in the end that would be your victory....."

Quoting above Mr. Beg, in support of his arguments, told that Sheikh Sahib enjoined people to be just to the neighbours and friends because that would end all miseries. He preached patience and forbearance. He asks people to depend on God always.

Sheikh Sahib then refers to the Hazratbal Incident and tells that after much time when he reached home he heard that his friends of the opposite party had created disturbances. He tells people that there included many a person who were under police surveillance for a very long time from the past.

Quoting the talks between the Inspector General Police Shri Mehra and Sheikh Sahib in Kud Jail which Sheikh Sahib related to the people, Mr. Beg stated that due consideration should be given to this discourse between Sheikh Sahib and the I.G.P. in the Kud Jail. Sheikh Sahib tells the IGP how Bakshi Gulam Muhammed acted on the 9th of Aug, 1953 and enacted a coup and the way in which the present Government was pitch-forked. He tells the IGP that his Govt. was overthrown on the support of guns and army. They had killed so many people to get the chairs. He relates the historical facts. He refers to the continuous interference of the police.....

whether CRP and others. Lord Birwood even comments that Bakshi Ghulam Mohammed would be less confident of his office if Indian bayonets were removed affirmed Mr. Beg. Sheikh Sahib in that way tells the Inspector General of Police that this government was brought in office by police ways. He wants that constitutional means must be used for such purposes. Mr. Beg said that Mr. Renzoo fully exposed what CRP was told to do during the elections. It was Misfortune to infer from this that Sheikh Sahib meant from this that Indian Army should go.

Commenting on that: "those who depend on your Army and Guns and Gadar, If you want you can arrest me anytime."

Mr. Beg stated that Sheikh Sahib told the Inspector General of Police that those who had been pitch forked into office had no support of the people. He respects Inspector General of Police as an officer in charge of the Law and order. Prosecution inference from this was not justifiable asserted Mr. Beg and said that not a word indicated that violence or use of force was preached.

Sheikh Sahib then relates to the people that he was pressed to leave the jail at once and also he was told to leave the Dak-Bungalow and how he was not given the transport and also how they locked up Veri Nag Dak Bungalow just to refuse him shelter for one night. He refers to various other provocations and the present one in which many of his colleagues have been arrested and humiliated.

"We have no interest in clash and conflict. The question is such which cannot be settled by chaos and disturbance. I want that there should be a peaceful atmosphere in Kashmir, India and Pakistan. This problem can be solved by friendship alone. Conditions in India effect conditions in Pakistan and conditions in Pakistan effect conditions in India. In spite of partition we should resolve our problems peacefully and in a friendly way. We want that they should come very close and near."

Quoting the above, Mr. Beg stated that Sheikh Sahib tells the people that he was not interested in conflicts and clash. He wants resolution of Kashmir Dispute amicably between India and Pakistan. He advocates peace and friendship between these two countries and was worried why there should be war between the two brothers. Mr. Beg asserted that no rioter would talk this language. It did not justify any inference that was drawn by the Prosecution asserted Mr. Beg.

"Let us today bear this challenge of provocation with patience and fortitude, we want that the dispute which has become an oozing sore for India, Pakistan and Kashmir should be resolved."

Mr. Beg stated that Sheikh Sahib enjoin upon people to bear with fortitude this challenge of repression to which his erstwhile colleagues were subjected. He tells that he had made a resolve to bear these suffering with tolerance and patience so that the oozing sore was healed.

The opponents did not want this because they were in the danger of loosing their chairs. Sheikh Sahib tells here that three brothers should sit down and resolve this dispute. Mr. Beg told that one brother was India and how such a man can be accused of spreading hatred against India who call's India his own brother.

Mr. Beg affirmed that the word 'One Galadar' would not mean Kashmir State or the Kashjir Government. It may be a harsh word but it could never be treason and hatred against the Government. He openly tells the people that he had same respect for Panditji. Can this be termed as spreading hatred against Panditji. Mr. Beg asked why the prosecution were suppressing these compliments about Panditji when such things would have made Panditji's position more strong at the International level and it would behove Mr. Pathak's ability and efficiency also. Sheikh Sahib requests Panditji to see for himself and try to win the hearts of the people back. This could not be treason stated Mr. Back.

Sheikh Sahib appeals Indian officers to understand that untruth will not avail anything. Peaceful way should be found out to resolve this question. Lawlessness should be stopped. Interrogation Centres should be closed. Vested interests did not want settlement between India and Pakistan. Sheikh Sahib wants to know whether any Government can remain in office which depends only on force. Mr. Beg here quoted from Mr. Sadiq's statement regarding prevalent goondaism in Kashmir State and said that he was at once offered a post so that he would not expose the sad state of affairs here. Mr. Beg asserted that this evidence of Mr. Sadiq helped him and exclaimed how strange that Mr. Sadiq got ministership by telling this story and Sheikh Sahib got prison. 1. Nov 1947

Sheikh Sahib tells Panditji that whatever Bakhshi tells was wrong. He wants Panditji to see for himself the repression let loose here and also what was being done to those very persons who were his colleagues in the freedom struggle. Sheikh Sahib complains that this was not expected that such things would happen in the time of Panditji. He appeals to, Panditji in the name of humanity to see for himself all these misfortunes, perpetrated on those who stood by him in the dark days of 1947. Mr. Beg asked whether a conspirator would appeal to a man against whom he was conspiring. Mr. Beg refuted that there was anything to support the prosecution allegation.

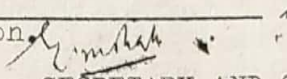
Mr. Beg said that Sheikh Sahib while concluding his speech affirmed that conflict and clashes do not solve any problem. He wants peaceful solution of the Kashmir Dispute. Mr. Beg commented that not a hint could be got from this speech that Sheikh Sahib spread hatred and

disaffection amongst the people and preached that force should be used for overthrowing the Government and annexing Kashmir with Pakistan. Sheikh Sahib requests CRP to haul up his men even if they commit lawlessness. They should control the lawlessness in Kashmir because they were from Gandhiji, India. Mr. Beg requested the legal luminaries who have come India on the prosecution side, to understand the accused correctly. Sheikh Sahib tells people that if police cannot give protection to the people against Goondas then mohalla people should join together and guard themselves from Goondaism. Mr. Beg said that, "even Vinobha preaches this from village to village. He is not held for any offence, but in Kashmir it is not expected that people who are demanding the right of self-determination should even dare to say such things." What a misfortune and what a differentiation remarked Mr. Beg.

(The Court rose for the day.)

Issued by
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Copy forwarded to the
for perusal and publication.


SECRETARY AND COUNSEL,
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

THE ALL JAMMU

AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ - SRINAGAR.

K A S H M I R.

Sri. ... 707.

Jammu... 5133.

Phone: - Jammu... 5133.
New Delhi, 32202.22ND MAY, 1961.

Branches:-

- * 1. The Dawn, Canal Rd,
Jammu.
- * 2. 81/48 Diplomatic
Enclave,
New Delhi, 21.

THE KASHMIR CONSPIRACY CASE.Resume of Mirza Muhammed Afzal Beg's arguments.

Resuming his arguments today Mirza Mohammed Afzal Beg referred to Exp. 269/0 /1 a speech delivered by Sheikh Sahib at Kralkhud on 2.3.58 and stated that according to the report this was a speech addressed to Hindus and Muslims. The context reveals that Sheikh Sahib told the same thing to this mixed gathering as he said to his audience in Hazratbal. With us, Mr. Beg remarked there were no double standards and no double talk. "Mr. Beg asked the court to note the slogans were the same as used in the other speeches preaching gospel of love and unity of God.

"..... We have become a prey to Aug 9 conspiracy when the Government here was overthrown. It was an unconstitutional act. The endeavour was to disturb the peace here. Those are your enemies who want to disturb the peace here....."

Quoting the above Mr. Beg stated that Sheikh Sahib refers to the coup of Aug 9 which was a conspiracy against the right of self-determination. He points out that the overthrow of the Government on 9 Aug was illegal and unconstitutional. Sheikh Sahib and others were victims of a conspiracy. Sheikh Sahib warns the people that agent provocateurs were engaged in disturbing the peace of the country. Mr. Beg asserted that he would have been the last person to preach maintenance of peace if he were having intention to disturb it. Sheikh Sahib complains that the Indian public was kept unaware of the happenings in Kashmir. There was no reference to any Government or person and it would be preposterous to infer that overthrow of the Govt. was meant by this.

"..... You know how during the dark night of Aug 9, the Government was overthrown here and how some faithless took over the reins of Govt. The faithlessness will never be forgotten by history. Muslims, Sikhs and Hindus were told that Sheikh Abdullah conspired with America..... If that was proved I will bear any punishment....."

Quoting the above Mr. Beg stated that every man had the absolute right to criticise and that did not constitute a crime. At the most it can be a defamation. A private individual cannot take the cover of high treason.

There was clear betrayal on 9 August when unconstitutional steps were taken. Sheikh Sahib was accused of Conspiracy. This was a preposterous allegation based on untruth and mischief. It was an open deceit by which public opinion was mislead and every one has the legitimate right to expose this conspiracy. Mr. Beg asserted that some faithless betrayed the constitution and the trust because he was against the right of the self determination. An individual was at liberty to say that there was a betrayal of constitution and the law. Sheikh Sahib had asked Coup enactors to have a vote of confidence, but this was denied. History of the constitutional law would record it and has recorded it asserted Mr. Beg. It was a departure which could not be forgotten. Did it in anyway convey that people should take up arms asked Mr. Beg.

Sheikh Sahib says that this fraud was committed on Muslim, Sikhs and Hindoos alike. Not even an inferential discrimination was made. He was denied to appear before the Constituent Assembly. He was kept in the prison. Should the right of explanation be denied to him asked Mr. Beg. National Conference even published a pamphlet that he wanted to make Kashmir another Korea. Sheikh Sahib tells that even a murderer was allowed to defend himself but he was denied even that right. He wants to face any impartial judicial tribunal. No body can be so frank to tell that if he was guilty he would beg for an apology. At this time a stage for his re-assessment was set up, asserted Mr. Beg.

"Hindus, Muslims and Sikhs of this place have trust on me. As Prime Minister I have served you. When you entrusted your treasures to me if I have done any injustice or distributed those to my near kith and kin then I should be accused and charged.those who enacted the Coup bargained with freedom of Kashmir.....The truth will in the end prevail."

Quoting the above Mr. Beg stated that Sheikh Sahib tells the people to come forward with any complaint of discrimination he even made between a Muslim, Sikh and Hindoo. He was teaching and preaching communal brother-hood asserted Mr. Beg. Sheikh Sahib tells the people that no crime was committed but there was a conspiracy by which the freedom of Kashmir was bartered away. India herself had said that people were the final arbiters and anyone going against that was guilty of subverting that relationship. They played with the honour of the Kashmir. Sheikh Sahib tells the people that these persons had not the courage to face him in an impartial Judicial Tribunal. If any body tells that ultimately the truth will succeed will that mean crime asked Mr. Beg. He affirmed that the inference drawn by the Prosecution Counsel was very wrong that could never mean that "that the government would come to an end." Sheikh Sahib advocated peaceful methods and tells the people that preposterous lies were spread against him. He tells the people that they do not forward any argument.....

/ and

World press was very critical and Sheikh Sahib refers to that and says that he was released under that pressure. He advises people that they should maintain peace because the people on that side try to disturb the peace. Mr. Beg referred to the presence of Sardar Lachhman Singh in the court who had perpetrated horrible atrocities on the accused in the Interrogation Centre.

Sheikh Sahab tells the people about the charges levelled against him. He was charged of being communal because he used to read Qoran and offer prayers. He asks people can a man who believes in 'Bacha Nagma' become a great Nationalist leader. Mr. Beg asked whether this would mean the same man about whom prosecution has sought to infer so. Mr. Beg asserted that such an inference was wrong.

"..... I pray to God to help me to become a true Muslim. He may help Hindus and Sikhs to become true Hindus and Sikhs. I wish that a Hindu acts upon Geeta and a Sikh upon Granth Sahib, Religion makes a man man....."

After quoting the above Mr. Beg stated that Sheikh Sahib enjoins upon his audience to stick to their own religions and remain firm on truth. Mr. Beg asked can this be termed preaching of communalism. Sheikh Sahib preached communal harmony and enjoined everyman to follow his religion and his guru because religion makes a man human. All accusations and imputations of the prosecution were refuted by this very document affirmed Mr. Beg. Mr. Beg asked, "would not secularism allow all religions to function so that unity of man was achieved".

"..... When they did not succeed in this way they played a mischief at Hazratbal..... Hundreds were arrested. Sofi Mohd Akber, Gulam Mohd Buth and Zaildar were arrested. They had served the nation for the last 27 years. Is there none gentle except Bakhshi family, Qadir Nata, Shaba Gada and others. These are a few goondas hardly 20 who are playing with the honour of Kashmir....."

Having quoted the above Mr. Beg stated that Sheikh Sahib referred to the arrests of his erstwhile colleagues who had been dubbed as 'Decoits'. Sheikh Sahib asks whether nobody was noble here except the Bakhshi family, Qadir Nata, Shaba Gada and others. Mr. Beg affirmed that it was astounding that a comment on the people should be termed as treason. They could at the most institute a case of defamation against Sheikh Sahib. Strange enough, remarked Mr. Beg, that these persons accept this allegation of Sheikh Sahib but Govt. of India takes notice of this and comes forward with a case. Anyhow they were individuals and that has nothing to do with section 121-A affirmed Mr. Beg. He asked if this could be termed as incitement as inferred by Mr. Pathak. Mr. Beg further remarked that nobody till today, knows that these persons were the pillars of Kashmir Govt.

"I heard stories in jail how Muslims, Hindus and Sikh girls are being molested.... I read this in Hindu papers because I was not given Muslim papers. Martand was also lamenting that nobody's honour was @

40. safe. The reality is that they do not want peace in the country. Peace would deprive them of their comforts and other comforts... I appeal to

Quoting the above Mr. Beg stated how Sheikh Sahib bemoans the molestation of Kashmiri Girls-Hindus. Muslims and Sikhs alike. Mr. Beg asked can this be termed as high treason and communalism. What more could a public man do except condemning Goondas. A Muslim leader of that stature was honour bound to do that as Mr. Beg. But the government of India protects these Goondas directly. Sheikh Sahib says that his adversaries do not want to be here because that would deprive them of influence and power. He appeals to Hindoos and Muslims to jointly oppose such elements who attempt to molest their daughters and sisters. Three things were clear from this speech affirmed Mr. Beg: (1) Sheikh Sahib strongly preaches united front against Goondas, (2) Appeals to curb the lawlessness and (3) He preaches peaceful methods for achieving this end. All inference drawn by the Prosecution fall to the ground, affirmed Mr. Beg.

"Remember when in 1947 your honour was in danger, Sheikh Abdullah stood by you. He told the majority community to get the bullet but safeguard their honour and respect of the minority. Ten years have passed, Sheikh Abdullah is same. If he did so, it was no obligation for anyone. I know the honour of every Kashmiri was my own honour and if his honour is being threatened then my head, will fall first and then his honour.

Quoting the above, Mr. Beg said that Sheikh Sahib appeals to the people to remember that truth should remain supreme. He recollects his past carrier and tells the non-Muslims that his honour lied in protecting the lives the properties of the non-Muslim minority. Mr. Beg asked what more pledge could have been given by such a leader. Mr. Beg told the court that right of self determination was their sacred right and for achieving that they would give their life blood. Sheikh Sahib repeats his pledge to save the minorities if God forbid any such necessity arises at anytime.

This absolutely excludes any thought of communal disturbances and refutes the charges of excitement or over-throw of the Government by force asserted Mr. Beg. He affirmed that were there equal justice, those who were charging them would have felt ashamed and gone away.

"Those who are masters of crores were with begging bowls in their hands 10 years before. If they became masters of lacks, Teeps and Cars, the question was wherefrom they got it. This is your blood. This is our blood by which they drench their hands. They know if this question is solved, all this will not remain.

Quoting the above Mr. Beg stated that every one was surprised as to where from these huge amounts came. The State under law should check up periodically the earnings of the Government servants. Here in Kashmir miracles have happened money has amassed in

5

in the pockets of a few. Could not this also, be agitated, was this a treason? asked Mr. Beg. Sheikh Sahib shakes the watch dog to life so that he may see for himself as to what was happening but misfortune was that Sheikh Sahib was sent back to the prison remarked Mr. Beg. Lamenting this Mr. Beg said, "Alas these days people who have ill gotten money are allowed to take the cover of treason and cases are instituted against the accused."

"....The question is that someone may shout from Banihal top that nobody can change this decision. This has no meaning. These goondas attack our honour. Today Sheikh Abdullah is communal..... Kashmir is ours. Those who say that they have taken a decision live in a fool's paradise....."

Having quoted the above Mr. Beg said that Sheikh Sahib tells the people that without them nobody could settle the future of this country. Mr. Beg posed a question that cant this law be changed by the Parliament or the Kashmir Assembly as it is. Sheikh Sahib refers to certain individuals who took part in the blood bath of 1947 -Killings. He asks the people whether such persons can be nationalists. "Whatever may be the case," Mr. Beg asserted, "this could not mean any Govt nor did it mean to excite the people." At the most it was the mental nervousness of the prosecution to draw such conclusions, remarked Mr. Beg. No communal inference can be read. Sheikh Sahib refers to a general fact of the history by telling the people about 47 happenings. The emphasis was not on violence but on peaceful means. No individual was branded as fool. If Sheikh Sahib refers to fool's paradise it should be noted that such a paradise was an imaginary one and those who do not take into consideration the hard realities of uncertainty, economic and mental chaos in Kashmir were living in a fools paradise, asserted Mr. Beg.

".....People of Kashmir have to decide their fate themselves. No other person can decide this.... The reality is that that Muslims, Sikhs and Hindus of this place should remember that till this question remains hanging, the honour, life and property of any individual will not be safe....."

After quoting the above Mr. Beg said that this very thing has been told by Panditji himself many a times. Two armies standing face to face. Slight clash may take a form of big conflagration. Mr. Beg requested the court to take judicial notice of the happenings of 1947 and said that it was incumbent upon a public man of Sheikh Sahib's stature to refer to it. Mr. Beg asserted that prosecution had given a biased picture of his speech by referring to a few lines instead of the whole speech.

Sheikh Sahib wants that this question should be settled by Kashmir, India and Pakistan together.

Mr. Beg stated that the only duty they had towards the people of Kashmir was to impress by force of logic that this problem must be solved amicably between India Pakistan and Kashmir. Panditji had many a time said that unilateral decision was no decision..... Sheikh Sahib advocates and insists peaceful settlement so that this cause of friction was removed. Mr. Beg stated that had Maharaja taken the right decision 13 years earlier many lives would have been saved. Sheikh Sahib tells the people not to woe the past so much because that would not solve any a problem.

"There you should remain peaceful; you should stop Goondaism. If any Goonda molests a Hindoo you should at once rise against him. He will in turn molest you tomorrow. You should preserve peace at any cost."

Quoting the above, Mr. Beg stated that this was the message to ~~Hindoos~~ and Muslims Sheikh Sahib gave- He wants that the lawlessness should end. Every body should safeguard the honour of his brother fellow, even though he might be a Hindoo. He asks the Muslims to consider the honour of Hindoos as their own.

Summing up Mr. Beg stated that there was no incitement, and violence against the Government. There was no reference to communal hatred and disharmony. On the contrary he preached tolerance, communal brotherhood. Sheikh Sahib insists on peaceful settlement of the Kashmir Dispute. No ingredient of 121 A can be proved by this speech, affirmed Mr. Beg.

AFTER THE BREAK

Mr. Lateef:- As Idul Zhua falls on May 25, 61, I would request for adjournment.

Court: What has Mr. Beg to say about it.

Mr. Beg: Who asks the accused we will celebrate our 9 Idd in Jail. This is between the Councils themselves.

Court: What has the prosecution to say about it.

Mr. Pandey: Alternate arrangements can be made or old practice should be followed.

Mr. Koul: If Mr. Lateef wants to go, Khawaja Mubarakh Shah or Khawaja Ghulam Mohammed Shah can remain present and the work should continue.

Court: They do not represent the accused on bail.

Mr. Koul: Then adjournment may be granted.

Court: I will decide it after Beg Sahib finishes his arguments today.

Mr. Beg referred to Exp. 269/L/1 a speech delivered by Sheikh Sahib at Jamia Musjid in Srinagar on 7-2-1958. Mr. Beg told the court that the slogans were usual slogans of Rai Shumari Zinda Bad etc. Sheikh Sahib refers to bad weather his indisposition and tells the people that he would tour the villages when his health improves. Mr. Beg said that the powers that be were afraid of Sheikh Sahib exposing the coup of 9 August and the false propaganda that was made out of that. Public had been played a

fraud upon Muslims were told one thing and the Hindoos another. Sheikh Sahib was combating the charges of communalism, Conspiracy with America, and turning Kashmir into another Korea. He wanted to expose all this myth. The Government in their self interest again put him behind the bars. Sheikh Sahib was trying to solve the Kashmir problem by plebiscite, if possible and by other peaceful means if agreed upon by the parties.

The intention of Sheikh Sahib's rural tour became known to them, they again proposed his re-arrest. Mr. Beg stated that 9 August was a Conspiracy against them and said that till this dispute remains unresolved these co-conspiracies would continue.

"Some friends say that Kashmir is integral part of India. I tell them that the voice of Kashmir is the voice of people. This State has not yet decided its future. This continuous repetition of "integral part" is meaningless. No decision about future of Kashmir has yet been taken. I want immediate solution; so that all sufferings will end."..

Quoting the above Mr. Beg stated that Sheikh Sahib said that Kashmir had not taken any decision as yet according to the principles laid down by India Government. Sheikh Sahib advocates a solution by the people themselves irrespective of caste, creed and colour. Mr. Beg asked can this called that be advocated use of force and that he was communal in approach. It was a peaceful way and honourable, way asserted Mr. Beg. Sheikh Sahib advocates the urgency so that all further misfortunes could be avoided.

This view that the people of the State would decide their future was universally accepted affirmed Mr. Beg. The present decision suffers that and this was a meaningless decision. Settlement was not so far ensured and if some one talked the hard reality he was accused of treason remarked Mr. Beg. The only crime of the accused was that they want the right of self-determination in Kashmir. Mr. Sadiq refers to the same lawlessness prevalent in Kashmir. No notice was taken about him. The accused were tried for treason because they refer to plebiscite also," remarked Mr. Beg. "Everyone in India and Kashmir and world know that the accused did never take recourse to force, or used booby traps or gun cotton slabs, asserted Mr. Beg."

"When you will talk truth, you will have to face miseries. You were told that Sheikh Abdullah was in conspiracy with America. If that was true I was prepared to undergo imprisonment. The people of Kashmir would alone decide about the future of this country.....

Sheikh Mohammed Abdullah is not ready to be cheated again. Sheikh Abdullah wants to expose this fraud."

After quoting the above Mr. Beg stated that Sheikh Sahib explains why the racket of American Conspiracy was spread far and wide. He tells the people that false stories were spread with a set purpose so that Kashmir would forget their birth right of self determination. When they failed in that they now tell the authorities in Delhi that Sheikh Sahib states that Kashmir was not integral part of India. Sheikh Sahib tells the people that had Bakhshi Sahib accused him of this charge in 1953 he would have accepted it. Mr. Beg stated that rape, loot etc carried out at this time in Kashmir was bypassed and even 300 cases against the DNC workers were withdrawn only because someone somewhere might not demand a plebiscite. Sheikh Sahib tells the people that the charges made in 1953 were baseless and grotesque. Mr. Beg asserted that the conduct corroborates his interpretation. Mr. Beg told that even in the court they were subjected to police influences and the prosecution even distorts its own documents in the court. This has not been done even in African trials. Unfortunately prosecution makes such inferences from these speeches which / ~~were~~ absolutely false. This smacks of police investigation. Further arguing Mr. Beg stated that Sheikh Sahib tells the people that had Bakhshi Sahib in 1953 told that Sheikh Sahib did not accept the accession of Kashmir with India he would have accepted it. The inference drawn by the prosecution was very wrong stated Mr. Beg.

Sheikh Sahib considers the people supreme for resolving the problem, affirmed Mr. Beg.

".....Hindustan produced Gandhiji. We hoped that India will not deceive us. When I saw that intentions of India were changed and they wanted to by-pass all the pledges, they joined against him.....Kashmir question has not been settled....."

After quoting the above Mr. Beg stated that the criticism might be stiff yet it could not amount to treason. Once India accepted Pakistan as aggressor and at the other time she sat with Pakistan to discuss the withdrawal of the Indian troops. Even now she is offering 1/3 of Kashmir to Pakistan. India was partitioned under a political agreement. Here the partition was on a military decision, leaving the people in uncertainty on both the sides. Political leaders of the people were not consulted. Then assurances were given that the people alone will decide. This was now being refused. What can it be termed other than a fraud? asked Mr. Beg. In Bihar there was a firing on students. Jai Prakash ruthlessly criticised the Indian authorities and Panditji. That was a guarantee for keeping the country on democratic lines. Mr. Beg asserted that they yet believe that India would honour her pledges. That would win her respect throughout the World and love throughout Kashmir.

Mr. Beg further said that Sheikh Sahib refers again to the respect he had for Pandit Ji and requested the court to take overall picture as requested by Mr. Pathak and not to wrench a few sentences from here and there and make inferences which were most unwarranted. Sheikh Sahib wants to expose his apponants by public opinion. This excludes the use of force and violence, affirmed Mr. Beg. He charges those with subversion of constitution who would not allow him to show by force of logic and argument that he was correct and August 9 was an unconstitutional act and also that his opponents were against the right of self-determination.

Mr. Beg affirmed that Sheikh Sahib did not use any force to overthrow government. Sheikh Sahib puts his case before the world and could that mean Conspiracy to overthrow a government and annexe Kashmir with Pakistan asked Mr. Beg. Sheikh Sahib tells high about Gandhiji and refers that he joined with India only because of those values which Gandhiji taught. That philosophy put unflinchingly faith in moral forces and preached that truth was only path of peace. Sheikh Sahib then asks why contrary to this all 9 August happened in Kashmir.

Sheikh Sahib tells the people that when he saw India wanted to resile from her commitments he was not prepared to stand by them but by the people alone which had been promised the right of self-determination. Sheikh Sahib refers to the fact that he told Pandit Ji that his position was made such that he was not now in a position to deliver the goods. Could this be termed as treason asked Mr. Beg. A criticism would not constitute a crime even though it might refer to India or to any individual. The criticism was too general and could not constitute an offence. Mr. Beg pointed that the court had the material from the Prosecution documents itself as to why they were and are being victimised so far. The basic defence gets stabilized that the accused were involved in this fictitious case because they believed in the right of self-determination, asserted Mr. Beg.

"Those who struggle for the sake of God, bear all troubles & tribulations. They never allow the voice of truth to get stifled. You have to act that very role. My speech would not solve anything. You have to show that character which in the past Mahajir and Ansar showed. Then will God end all troubles."

Noting the above - Mr. Beg stated that Sheikh Sahib enjoin upon the people to bear all sufferings in the way of God because achieving the right of self determination was a sacred duty of every man irrespective of caste, creed, and colour. He wants that the people should suffer all troubles and sufferings with fortitude and keep the banners of truth very high."

Mr. Beg stated that Shikh Sahib tells the people that whoever stands firm on truth has to face many difficulties, because the opponents were those who believe in repression and harassment. Mr. Pathak inferred that by condemning the falsehood Sheikh Sahib condemned the Government. Mr. Beg said that if this was the apprehension then nothing in Kashmir can be talked against untruth and falsehood. How that would mean spreading hatred against the Government of India asked Mr. Beg. Spreading hatred could be noticeable only when it was done by taking recourse to violent means.

about
Sheikh Sahib tells his audience that the seeker of the truth always considers difficulties that come in his way as a blessing from God. Could this be termed as treason and preaching of violence asked Mr. Beg.

Sheikh Sahib tells his colleagues who were in prisons facing hardships and miseries for advocating the right of self determination. The question was as to how did they mean use of force or the overthrow of Government., asked Mr. N. Beg.

".....Abu Baker was an Rames (well to do). He gave his wealth in the way of God and followed Prophet Muhammed. He was harassed.....In Uhad and Badr they got victory. We are the followers of Prophet of Islam.....We should always suffer for this voice of truth. We should bear these laughingly....."

Having quoted the above Mr. Beg said that Sheikh Sahib cited two examples from the Islamic History about Uhad and Badr and how far the love of the Prophet and truth many a / spent people have their lives. Unfortunately Mr. Pathak infers that this was meant to excite people and by a religious appeal Sheikh Sahib wanted that people should not accept the Kashmir Govt. Mr. Beg asked that this was a most fantastic and unfortunate inference. Sheikh Sahib here teaches the love of the Prophet and has nothing to do with politics, Government or other mundane matters.

".....On 9th August 1953, they inflicted tortures on us. It was our own man who became faithless. By various means our workers were corrupted. But God created new workers. I want that downtrodden of this country should prosper. God should keep love and unity intact. The enemy will try hard to disrupt us. You be patient and forbearing, so that your unity does not become weakened. In these months I tried hard that Indian leaders should give some reason, but instead they threaten with army and power and might....."

After quoting the above Mr. Beg stated that Sheikh Sahib advocates the end of the miseries in which the majority had fallen. Mr. Beg said that the Muslims were considered backward community. Glancy Report was obvious on that. In spite of that he asks people to be patient and forbearing. Sheikh Sahib invites the authorities in India and others to give any reason for all that was being done but instead they were threatening with army and guns.

He tells people that self determination was their anchor sheet in 1947 army was sent to safeguard this right. Beg Sahib asked could this be termed as treason. Sheikh Sahib reiterates the right of self-determination and affirms that his stand was same as that of 1931 or 1947. He tells people that even Bakshi Sahib said same when commenting on the joint communique issued by the two Prime Ministers of India and Pakistan on 21 August 1953.

Mr. Beg affirmed that word Janab was used with the name of Bakhshi Sahib by Sheikh Sahib and could this be termed as spreading hatred. Sheikh Sahib was arguing a matter and one who argues a matter does not preach violence or use of force. Sheikh Sahib condemned the enormous waste on armies and wanted that this should have been spent on the economic progress of the Sub-Continent.

Mr. Beg stated then Sheikh Sahib quoted in this gathering from the speech of Pt. Nehru who had assured the world that Kashmiries would decide their future, because India did not want to get a Military decision.

Mr. Beg stated that there was nothing criminal in that. Sheikh Sahib only refuses to subscribe to forced accession.

/time

/ of others

"Today it is said that from immemorial Kashmir has been an integral part of India. However, let me tell Bakhshi Ghulam Mohammed that he is dancing to the tune of / .. There is a rope in his nose and he is being danced like Karam Din. He says he is ironman. Can ironman behave like this. God may show him the right path. That will happen what people will decide and not what Krishna Menon will decide."

Mr. Beg told the court that the meaning of this should not be taken in a physical sense but in metaphysical sense. It meant that one should not become appsh. Mr. Beg said that Bakhshi Ghulam Mohammed was far more pretty and the meaning was always metaphysical. It meant that Bakhshi Sahib should not dance at somebody's tunes and subject himself to wire pulling of others. In a democracy one has to be hard skinned. Papers were full with cartoons these days. Even great statesmen of the world like Pandit Ji, Churchill were caricatured. Shankers Cartoons have become an important feature of Indian democracy. Sheikh Sahib with sorrow refers to Bakhshi Sahib and wants to know as to what has become to such an old fighter that he dances at the tune of of others and asks as to why does not he act upon his in-dependent judgement and free opinion. Sheikh Sahib recollects his 25 years association and comradeship with him- He repents this attitude of Bakhshi Sahib.

Here Mr. Beg reminded to an incident related to Sir Charles Napier when he was asked to conquer Sind. He did that but wrote that he was asked to conquer Sind although Sind / innocent. Here in Kashmir the same story was repeated, told Mr. Beg. Prosecution wants to read out simple sentences from the speeches to show that intentions of Sheikh Sahib were criminal and he wanted to overthrow the Kashmir Government and annex Kashmir with Pakistan.

Sheikh Sahib contrasts the character of an iron man who never dance at the tunes of others. No feelings of bitterness and hatred were evident from this affirmed Mr. Beg. Instead these words tell about love and affection, Sheikh Sahib has for Bakshi Sahib. Sheikh Sahib prays for Bakshi Sahib and prayers were always for those who were loved and not for those against whom there was hatred affirmed Mr. Beg; that: "There was nothing derogatory. No cudgles were taken and all was left to God," remarked Mr. Beg. Mr. Beg stated that the central point in this speech was that people should bear with patience and fortitude all the hardships and sufferings. Sheikh Sahib told the people that this problem wanted peaceful atmosphere; he preached supremacy of law and condemned chaos. He wants the people to be calm and not to take recourse to force or violence. Mr. Beg commented that no words peaceful than this could be used. Sheikh Sahib beseeches people to forbear all sufferings and he wants to avoid all sorts of confusion because that would put the people in disadvantageous position. He advocates respect of law and order.

Throughout the speech there was no indication of use of force, creation of disorder & use of criminal force to subvert the Govt. and annexe the State with Pakistan - Inferences drawn were wild; unjustified and irrational, asserted Mr. Beg.

The inferences that Sheikh Sahib referred to religions to spread hatred and disaffection was fantastic affirmed Mr. Beg. Instead Sheikh Sahib used Islamic history to cement brotherhood of man irrespective of caste creed and colour. Gandhi Ji even did so to channelize the masses on one platform and achieved that unity which compelled British Imperialism to bow before his truth remarked Mr. Beg.

Not one inference was justified which the Prosecution had drawn while arguing this case. Sheikh Sahib tells the people to be calm and cool and have human brotherhood as sacred as word of God. If all this was said to be spreading hatred then a the example was same as that of Australian professor who was beheaded because he taught his students that earth was round. He was charged of treason on the grounds that the Globe from which he was demonstrating was round and so were bombs. Mr. Beg said that such was the case here in Kashmir. For preaching moral values and ethics Sheikh Sahib and accused are charged with spreading hatred and disaffection and of using force to overthrow the Government and annexe Kashmir with Pakistan.

(The Court adjourned till 31st May, 1961.)

Issued by
J&K LEGAL DEFENCE COMMITTEE
JAMMU.

Copy forwarded to _____
for perusal and publication.

SECRETARY AND COUNSEL,
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Telegrams- 'INSAF'

THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ - SRINAGAR.
K A S H M I R

Branches:-

one:-
1. Srinagar, 707.
2. Jammu, 5133.
3. New Delhi, 32202.

1ST JUNE, 1961.

1. The Dawn, Canal Road,
Jammu.
2. 81/48 Diplomatic -
Enclave,
New Delhi-21.

THE KASHMIR CONSPIRACY CASE

Resume of Mirza Mohd Afzal Beg's arguments.

After an adjournment of 8 days Mr. Beg continuing his arguments today stated that the prosecution had sought to draw certain inferences from Sheikh Sahib's speeches and these were:

- (1) "The setting of Consembly amount to abandonment of the plebiscite."
- (2) "The Security Council could not interfere in this which was a domestic matter of the State."
- (3) "Plebiscite means the ascertainment of the wishes of the people."
- (4) "It is inconceivable that after the Constitution is made plebiscite be held to undo the Constitution."

Mr. Beg repudiated these inferences and stated that these matters were grave and could not be lightly disposed off in the way the prosecution had done. He stated that the contentions of prosecution were illogical and incorrect.

Mr. Beg then referred to the letters alleged to be sent by Sheikh Sahib from jail to outside people. Some of them were alleged to have been written by Pir Abdul Gani. Mr. Beg in this respect drew the attention of the court to his answers to Question No. 100 and 101 under Sec. 342. Mr. Beg stated that the contents revealed a peaceful policy Sheikh Sahib advocated by while addressing his followers. These documents have gone through the normal channels of jail and were duly censored and bear the signatures of Suptd. Censorship was very rigid. Even in the matter of doubt a letter was suppressed.

Keeping all this in mind the inference was logical that jail authorities never thought anything objectionable in these letters and thus these were sent out. Prosecution Counsel stated here that various Superintendents of jail did not understand the language and therefore these were censored and sent out. Mr. Beg stated that Superintendents of the prison Sheikh Ferozdin, Dr. Oswal, Mr. Ganjoo and others were fully experienced persons and men of letters and besides them there were C.R.P Commandants who were incharge of over-all supervision. Thus the contention of the prosecution falls through.

Mr. Beg stated that the prosecution has said that the general purpose of these letters was same as that of the speeches. Mr. Beg refuting this charge of the prosecution stated that these letters were general in nature and their contents relate high values of human life - a matter common to all human beings. It would be thus irrational to conclude that they were of conspiratorial nature. The contents of the letters preach peace, amity, brotherhood, love and communal harmony and this in essence was what Sheikh Sahib preached in his speeches. Throughout these letters this spirit was predominant and the affect on any reader could be considerable for keeping oneness of man sacred. These advocate forbearance, fortitude and patience during sufferings and calamities of any man. The writer preaches from Quran the gospel that the misfortune was the result of man's own actions. He thus tells the reader that self-purification

was the remedy.

Mr. Beg stated that in this sense the spirit of these letters was the same as that of the speeches delivered by Sheikh Sahib at Hazratbal, Kralkhud, Jumma Musjid etc., wherein he preached that salvation laid in remembrance of God. He advocated peaceful forbearance of calamities. Mr. Beg said that in the words of Wordsworth it meant:

"Trailing clouds of glory do we come from God,
who is our home."

Sheikh Sahib preached that the way for salvation was to have complete trust in God. The important feature of these letters was that the major portion of these letters were quotations from Maulana Azad's 'Shaheed-i-Azam', 'Great Martyr' and from other works of Maulana. Maulana was a great patriot and he died as the Education Minister of Government of India. Sheikh Sahib's letters rally round the central theme of Maulana. If these letters were shown that they teach violence or overthrow of Government then it would be indirectly saying that Maulana's books should be proscribed.

These letters preach communal harmony and peaceful settlement of Kashmir dispute. These refute all the inferences drawn by the prosecution. Not an iota of inference can be drawn that Sheikh Sahib, by writing these letters, meant to use force, overthrow Kashmir Govt. and annexe Kashmir with Pakistan. In reality these letters were defence documents which disprove the allegations of the prosecution against the accused.

Mr. Beg then took up Exps 58, 114, 46 and 65 alleged to be letters written by Sheikh Sahib from jail to the people outside.

"My idea is that these natural calamities and sufferings have a bright side also, because these hardships and trials divert the attention of the man towards his own shortcomings, transgressions, apostacies and sins, and thus provides him an opportunity to safeguard his person from these and adopt a way of righteousness and virtue. Our present hardships are the direct outcome of these bad deeds. If we make restitution and our prayers and offerings and supplications are not merely formal but show real change of heart and abstinence from further sins then we should believe that God will Shower His Mercy on us and transform our sorrow into happiness."

After quoting the above Mr. Beg stated that this letter related the calamities of the floods in Kashmir. Sheikh Sahib tells about the disastrous consequences of floods. Memories being fresh they knew what that meant, remarked Mr. Beg, and further said that had it been an agitator no better opportunity could have been available to him to preach chaos, disturbance and unrest. But Sheikh Sahib here preaches forbearance, fortitude. He knew the mass mind of the people and that was the time when emotions could be raised but in jail he visualizes the difficulties of Bakhshi Gulam Mohammed and feels his helplessness and like a true Muslim exhorts the people that the calamities were the result of disobedience towards God and misdeeds of the people. Sheikh Sahib preaches that people should first purify their heart and then these calamities would end. He advocates penance and repentance for the change of heart. Could this mean in any way preaching overthrow of Govt., asked Mr. Beg. Beg Sahib stated that the prosecution had told that the Superintendents of jail did not understand the meaning of these letters and asked what actually was meant by these letters which preached nothing else than forbearance and patience and hope for the mercy of God. This all refutes the allegations of the prosecution. Distortion has a limit and prosecution had surpassed that limit also remarked Mr. Beg.

"A few days ago the rumours about my transfer to some other jail were spread. These have made friends and relations anxious. These rumours are far from truth. By the grace of God we are all well and are not at all unhelpful of Divine Mercy. You as our friends should not also become disappointed and discouraged. Those who do not succumb to sufferings and those who remain steadfast on the....."

Please see next page.

path of truth, and never get tired by endeavors and action; their success is always sure and conclusive and such people alone achieve the victory and their objects.

Mr. Beg stated that in this letter---Sheikh Sahib refers to the rumour that was spread that he (Sheikh Sahib) has been transferred to Gajpat prison. Mr. Beg stated that this prison was associated with horrors. Mr. Beg stated that even he (Mr. Beg) in jail became anxious and nervous when he heard this news. People outside naturally would have become highly nervous when they had heard this news about Sheikh Sahib the symbol of their aspirations. Government issued a communique refuting this news as a mischievous lie. Nobody could have believed this communique, had not Sheikh Sahib refuted this news himself. Mr. Beg remarked were Sheikh Sahib interested in creating upheaval he would have kept quiet. But what he ^{did} asked Mr. Beg. Had he kept quiet the silence would have supplimented the fire of worry and unrest. He tells people instead that he was hail and hearty. He appeased people, allayed their fears and helped Government. It was a direct contradiction of the allegations of the prosecution affirmed Mr. Beg. There was not a slightest motive of such allegation in these letters.

Quoting from Exp 64, another letter of Sheikh Sahib.

"But this offering was not an offering of blood and flesh. It was the sacrifice of soul and heart. This was a sacrifice for the love of God alone. It was not to turn the earth red with the blood of his only son by a father but it was the sacrifice of all desires and aspirations before God. The outward sacrifice of animals is in reality the apparent reflection of that inner imprint, otherwise, God needs no sacrifices of blood and flesh. God accepts piety of man alone."

Mr. Beg stated that his letter deals with Qurbani and Roza. About the former Sheikh Sahib says that it was not sacrifice of flesh and blood but a sacrifice of spirit and heart. He tells the addressee that Piety was the renunciation of mundane desires and not an offering of a goat or sheep. Mr. Beg stated that a man desirous of inciting people against Government would never talk in this language. About Roza also Sheikh Sahib tells his addressees to purify their heart. This document also proves that Sheikh Sahib attempt was always to teach his audience the paramount importance of purifying character and holding the dignity of man. Mr. Beg refuted all allegations of prosecution that Sheikh Sahib intended to use force, overthrow the Government and annexe Kashmir with Pakistan. He termed them as wildest allegations.

Quoting from Exp 65.

"Khawaja Sahib and Sofi Sahib are as usual recluses.....Sheep and chicken are all well. The last hen has hatched five white chicks. Today we have placed eggs under another hen. The chicks have been injected also."

Mr. Beg stated that it mentions about eggs and hens and it did explain his (Mr. Beg's) letter Exp. 117. The whole case of prosecution was full of obsession. There was nothing conspiratorial in eggs and hens, as alleged by the Prosecution. Sheikh Sahib also mentions about his poultry which was his (Mr. Beg's) hobby also in Udhampur. No bombs and violence was meant as was alleged by the prosecution, asserted Mr. Beg.

Summing up Mr. Beg stated that there was no evidence whatever supporting the contention of prosecution that Sheikh Sahib advocated use of force, overthrow of Govt. or annexation of Kashmir with Pakistan. The allegation that Sheikh Sahib personified himself with truth and Govt. with untruth was highly baseless. Mr. Beg affirmed that any reformer of Sheikh Sahib's stature would always concentrate people on truth and purification of mind. That was done by every where by every reformer and that was the meaning of "that in the end truth will prevail." This emblem was hanging in Prime Minister's house, Parliament House and other places of Govt. of India. Can an inference be drawn that India alone personifies herself with truth and other countries were standing on untruth. Such an inference would be absurd and fantastic affirmed Mr. Beg. Mr. Beg then stated that in freedom Movements Gandhiji's letters from jail were regularly published and circulated in "Harijan." Mr. Beg affirmed that not an

4

iota of matter contained in these letters as alleged by the prosecution was exciting people to violence or overthrow of the Government.

Referring to the draft resolution alleged to have been recovered from the residence of Sheikh Sahib on 29th April, 1953 and alleged to have been corrected by him, Mr. Beg submitted his answer to Question No. 124 should also be considered. Beg Sahib stated that this search was conducted in a very dubious way. Sheikh Sahib's brother was not allowed to attend the search and not even one respectable citizen was called. This was a pre-planned search affirmed Mr. Beg. The person who conducted the search wrote on spot that this document was in the handwriting of Sheikh Sahib although it was not in his handwriting. Mr. Beg referred to the search memo Exp. 280 and stated that the surprise was that A.D.M. was there and he at least should have seen that it would have been unfair to the person who was not present there and in whose absence the search was made to pin down this document to him. The prosecution did not deny that Sheikh Sahib enjoys the reputation of being an acknowledged leader of the people affirmed Mr. Beg. This was not acknowledged by the prosecution alone but by every political party. As a symbol of freedom struggle he had received tributes from Gandhiji and Panditji even. At one time Gandhiji was soul of the Congress and at another time he ceased to be its member and in spite of this the Congress leaders would always seek his advice and would take the draft resolutions to him. But the responsibility for all that was always of Congress and not of Gandhiji. It was not an act of Gandhiji. Assuming though denying Mr. Beg stated that someone might have gone to Sheikh Sahib to get his advice and asked what was the crime Sheikh Sahib committed especially when the merit of this document was considered. It relates to the comment of the Plebiscite Front on Graham Report. Presuming that it was so Mr. Beg asked, "Was it not open to the Plebiscite Front to say a word about the pronouncement of the Security Council representatives vis-a-vis the fate of Kashmir?" If that was the attitude then people in Kashmir were living in the darkest middle age, retorted Mr. Beg. Mr. Beg asked what was the crime in it. He asserted that some times Praja Parishad, P.S.P, Communists and one day Bakhshi Gulam Mohammed himself might consult Sheikh Sahib because of his position as a symbol of self determination and more so when people bow before him. Gandhiji was often consulted and nobody pinned down Gandhiji for the consequences of those matters. Recently every party consulted Vinobha in Kashmir and that did not mean that he was responsible for the actions of these parties, asserted Mr. Beg. Similar was the position of Sheikh Sahib in Kashmir affirmed Mr. Beg. Thus deeds, actions, omissions and commissions of a party cannot be imputed to Sheikh Sahib. Mr. Beg denied that that was the resolution of Plebiscite Front and even so Mr. Beg said that this should be viewed from Sec. 121-A. This did not afford any ingredient by which it could be shown that use of force or violence, overthrow of the Government was meant remarked Beg Sahib.

Referring to Exp. 171 and 172, alleged letters of Mr. Gulam Mohammed Chiken and depositions of P.W Gulam Mohammed Buti 58 and Pandit Ramchand PW 183 and to the replies of Chiken Sahib to Question No. 176, Mr. Beg stated that these documents i.e 171 and 172 were outside the period of conspiracy and thus were inadmissible. The law referred by the prosecution did not apply to this case. That accused was charged of conspiracy between 9 Aug 1953 and 29th April and whatever he did before or after that period was outside the period of this case and thus was inadmissible. Here the point of time was involved. That was outside the period of conspiracy and thus inadmissible.

Further these documents were written in Central Jail Srinagar as alleged. There was no evidence about it and it was only on presumption that this has to be believed as told by prosecution. Circumstances prevailing in jail should be kept in view requested Mr. Beg. Searches were conducted by jail staff and Punjab Police. Mr. Beg requested the court to note that Hazratbal trial was conducted in Central Jail where there were separate compartments for visitors, relatives and the undertrials.

and that also made direct contact impossible.

Referring to the deposition of PW Ghulam Mohd. 58, Mr. Beg stated that this PW admits that Exp. 84 was in the handwriting of Mr. Chikkan. Mr. Beg stated that Exp. 84 was shown by the Prosecution to be in the handwriting of some other person. So far as the handwriting identification of Mr. Chikkan was concerned it amounted to a nullity. It was therefore for the prosecution to decide whether the author of Exp. 84 was Mr. Chikkan or some other person as alleged by the prosecution. Mr. Beg affirmed that this document was in reality neither in the handwriting of Mr. Chikkan nor some other person as alleged by prosecution.

Referring to the deposition of Pt. Ramchand PW 123, Mr. Beg stated that Pt. Ramchand was a copyist. He admits that for securing a copy there should be an application on the file which should be entered in a register. There was neither an application nor such entry on the record affirmed Mr. Beg. The inference was that the Sona Kalloo's file never went to this PW. His evidence judicially was not worthy of notice.

Mr. Beg stated that both the witnesses were Government servants and under the thumb of the prosecution. These documents bear the initials of G.M.----- and the prosecution say that it meant Ghulam Mohd. There was no reason for him to use such initials when he was busy in a conspiracy as alleged. However these would mean Ghulam Mustafa Gani Mir, Gaus Mohammed also. Mr. Beg affirmed that it was a height of folly to take the meaning of Ghulam Mohammed from these initials.

AFTER THE BREAK.

Mr. Beg continuing his arguments referred to leaflet Exp. 123 alleged to be a poster "A word to Army" written by Mr. Chikkan and handed over to Ghulam Mohammed Butt PW 58 for distribution. Mr. Beg stated that this leaflet was cyclostyled, unsigned and undated. No word handwritten was on it and no name of the sender or the writer could judicially be inferred. It was not also inferred by the prosecution that the handwriting on the cover was in Mr. Chikkan's hand. He was given complete clearance on that point also and thus no identification could be fixed from these things even.

Second feature of this document was that its copies were sent to the 2nd Additional Munsiff Srinagar, Director Sericulture Srinagar, Assistant Superintendent Police Armed reserve Srinagar and Assistant Superintendent of Police CIA Srinagar and the leaflet was captioned, "A word to Indian Army". Addressees were civilians and not the Army men affirmed Mr. Beg. All this evidence was therefore, that none of these letters was sent to Military personnel. The inference was very strong asserted Mr. Beg that they were not for the Army and prosecution cannot take cover under that.

The allegation that these were circulated in order to influence the mind of the Army falls through asserted Mr. Beg. Second Munsiff was the gentleman who recorded the statement of Mr. Parwana u/s 164 in Bomb case and Sheikh Ghulam Qadir Assistant Superintendent of Police CIA and J.N. Zutshi Assistant Superintendent of Police Reserve Police complete the trio of prosecution. The theory crystallises that Special men were put to cook up a story against the accused. Had General Thimaya himself come forward and deposed here the matter would have been different affirmed Mr. Beg. In addition to this homely group there was another civilian Director Sericulture who has neither endorsed this cover nor sent it back to police for information and thus prosecution theory falls to the ground, and it becomes obvious that this whole story was concocted.

Mr. Beg then quoting the following from the deposition of PW 58 Ghulam Mohammed Butt:

"One day suddenly Ghulam Mohd. Chikkan met the deponent in a Police van.

Mr. Beg stated that it was fantastic to believe that a detenu in Police custody would stop in Raghunath Bazar and could have a chat with PW. If it were the fact the best witness would have been the Police man in charge, affirmed Mr. Beg.

Raghunath Bazzar was the most congested in area and traffic in Jammu city affirmed Mr. Beg. And thus prosecution could produce scores of independent men to prove this incident. The real thing was that it never happened.

"The deponent wrote to Mr. Chiken for money and Mr. Chiken sent him one hundred rupees and the deponent went to Delhi."

After quoting the above Mr. Beg stated that all the cash amongst other things was never allowed in jail. Entry in and out was strictly searched. Interviews were always held in a small room where interviewers, prisoners and Suptd. jail used to sit together. The money was always kept out of the jail and Mr. Beg stated that the conditions in jail were such that he would not be in a position at present to identify current Naya Paisa. Mr. Beg asked how can a thing be assumed which was not a fact unless that was not supported by evidence. If prisoners got money it was always delivered to the Suptd. jail by relatives and by Government even.

"Many people met deponent in Srinagar. Mr. Chiken also met the deponent. Mr. Chiken told the deponent that he should meet him at his house. Deponent went there and he told him to take some papers with him when going back which were of political nature. Deponent brought them from Srinagar. They were in the paper box of a boot case. It was handed over to him in Odeon Hotel....."

Quoting the above Mr. Beg stated that this alleged box was of card board and handed over in a public house Odeon Hotel. The proper place would have been to hand over this alleged box in the house of Mr. Chiken moreso when both were well educated. Mr. Beg stated that by this the story becomes highly improbable.

"That box which Gulam Mohammed Chiken gave to me remained for one night in Odeon Hotel. That hotel is near Special Staff and Thana Kothi Bagh..... Abdul Kabir alias Jail Baba was also there at that time when Gulam Mohd Chiken gave that box to me. That Jail Baba was Assembly Member from National Conference at that time and is now also. After 9th August National Conference was divided into two. One part remained with Bakhshi Sahib and the other with Sheikh Mohammed Abdullah accused and from this division Jail Baba remained with Bakhshi Sahib. Gulam Mohammed Chiken told Jail Baba that that box be taken to Peer Maqbool Gilani Sahib in Jammu..."

After quoting the above from the deposition of P.W. 58 Mr. Beg stated that this PW admits that it was in the hotel for one night and its cover could be lifted easily. Even Kabir Khan alias Jail Baba, a political adversary, was told to carry such a matter to Jammu. Mr. Beg asked could it be believed that a political opponent could be asked to carry incriminatory material. Every word in the passage was important from defence point of view remarked Mr. Beg.

"Before that I had become acquainted with Gulam Mohammed Chiken Sahib but there was not any kind of friendship."

After quoting the above Mr. Beg stated that this PW was of a casual acquaintance of Mr. Chiken and the degree of intimacy claimed by this PW was very ordinary and formal rather than a nodding acquaintance. Mr. Beg requested the court to note that it was impossible for Mr. Chiken to hand over incriminatory material in that setting to this PW.

"Abdul Aziz of Hawal is my relative. He was a Ghat munshi in Food Control Department. You were Director

-7-

Food Control before August 1953 in that Department. You dismissed Abdul Aziz from the service as Director Food control."

Mr. Beg stated that from the very evidence of this Pw animous against Mr. Chikkan was established. Mr. Beg further stated that this leaflet was alleged to have been sent on 26th January as Independence Greetings. In answer to the Question No. u/s 342 Mr. Chikkan states that he was released on 25th January and was kept as an internee in Premier Hotel Jammu by Government and in Mid Feb, 1955 this ban was lifted and this remarked Mr. Beg gets him out of picture from Srinagar on this day. "His physical association with this allegation was thus excluded by Govt. Orders itself, affirmed Mr. Beg.

Ellucidating further Mr. Beg said that these letters bore service stamps as alleged. Wherefrom could Mr. Chikkan get these stamps and no house search was made proves that this was a cooked up story. No one was prosecuted for theft and this also supports the inference that all this was a concoction.

"One time suddenly M.A. Beg met the deponant.....M.A. Beg had come to Jammu in connection with Assembly. He told me to make arrangements for his boarding and lodging in Dak Banglow.

Quoting the above Mr. Beg stated that PW states that he (Mr. Beg) was also coming to Jammu. Mr. Beg asked as to why should not Mr. Chikkan entrust this material to him instead to this PW. This story of the prosecution could never be believed by anyone.

Mr. Beg further stated that till Mid February Mr. Chikkan was in Jammu and the question was why should not he have posted this material himself.

Mr. Beg further said that this PW was a Government servant. His Case against him was withdrawn and he was reinstated and then transferred to Srinagar his home place; giving him a further comfort in order to use him against the accused and the inference was that he could go to any extent to oblige the police, asserted Mr. Beg.

Summing up Mr. Beg stated that over and above to what has been argued, the contents of the leaflet speak high of army, its traditions and the inspiring leadership of Gandhiji. Prosecution Counsel infers from this that the writer was indoctrinating the mind of the Army with politics. Mr. Beg refuted this. However, he stated that the withdrawal of the Army was discussed from Prime Minister of India down to the person in gutter publically, in legislatures, Parliaments and public meetings. It was also discussed by the Army Chiefs of Pakistan of India and other countries. Mr. Beg asked was not that indoctrination and said it was too late now for Mr. Pathak to keep Indian Army in a glass House. All issues like Kashmir, Korea, Congo were political issues and Army of every country has to act in this background. These things do not indoctrinate Armies these days because all Armies were kept politically informed by reading various political matters of the world. Mr. Beg asserted that not a single leaflet from the accused went to the Army. However, if it was presumed so; can it be said that these contents indoctrinated the Army asked Mr. Beg. From the contents it was obvious that there was no advocacy for use of force, overthrow of the Govt. or annexation of Kashmir with Pakistan and thus this document needs rejection at the hands of the Court as fantastic, remarked Mr. Beg.

(that Mr. Beg stated he fully argued the documentary evidence produced by the prosecution. All documents of whatever nature- letters, speeches, posters etc., did not give any evidence about the ingredients of Section. 121-A. He requested the Court to look at these documents with as much care as was expected and then it would be found that these documents refute all the inferences drawn by Prosecution. Even though assuming that these documents were correct as alleged by the prosecution, these did not furnish any evidence whatsoever to prove the allegations of the prosecution affirmed Mr. Beg. The interpretations given by Prosecution were not

also compatible with the circumstances. Recovery memos were downright forgery and all documents faked.

There was no evidence that Exp. 33 was written by Mr. Ghulam Rasool accused and on the contrary there were 5 accused who knew his handwriting and all of them refuted that it was in his handwriting. Interpretations given by prosecution were wrong and incompatible with circumstances.

Nothing connects the accused with the documents of various series asserted Mr. Beg and moreover these documents did never advocate use of force, overthrow of government and annexation of Kashmir with Pakistan.

Mr. Beg remarked that Kashmir Question was an international question and said that, "so many have expressed their views. Sheikh Sahib and we also express views about it which are known every where. Mere coincidence that certain views of the accused tallied with certain views of certain persons elsewhere did not show any conspiracy."

Sheikh Sahib's letters and speeches did not show any ingredients that could support prosecution allegation, affirmed Mr. Beg.

What was established then from these documents was peaceful settlement of Kashmir question affirmed Mr. Beg. The question was that prosecution dragged aggression of Pak into this case was only that prosecution wanted to rouse passion in order to get the accused into trouble and keep up the cold war tension. Whatever might be the case Mr. Beg requested the court to judge this all in a calm and cool manner and dispense the justice accordingly.

Prosecution raises a hue and cry why Pakistan praises Sheikh Sahib and why Sheikh Sahib did not abuse Pakistan. The purpose was only to feed cold war tension otherwise this was not a judicial proof. Mr. Beg told the court that as an accused he had the apprehension that this propagandist evidence might not be treated as judicial evidence and this evidence did not even prima facie prove the ingredients of Sec. 121-A. Mr. Beg believed that courts governed by Constitution of India will put their foot down however though the Prosecution may be very high in power and position.

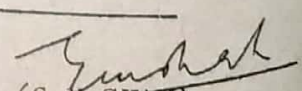
The Prosecution also takes recourse to circumstantial evidence on the ground that in a conspiracy direct evidence was not possible. Mr. Beg asserted that that also needs great consideration and care as provided by law. Quoting from AIR 1945 Cal. 93, "The relevant facts and circumstances must however be of such a compelling nature as must necessarily lead the judge or the jury as the case may be to find that accused person must be guilty. In other words the inference of guilt must be irresistible and wholly incompatible with innocence of the accused." He stated that evidence should lead the jury to the conclusion that the accused were guilty and circumstances were such that accused were directly concerned with the guilt. The story must be compatible with the facts. Mr. Beg stated that the inference of the guilt must inevitably connect the accused with the guilt. That circumstantial evidence alone was accepted by law and not the circumstantial evidence produced by the prosecution which lacks all the essentials and which was mostly concocted; affirmed Mr. Beg.

Mr. Beg told the court that after this he would refer to August 9 because prosecution had itself taken him to that aspect and also he would deal with the dismissal of Sheikh Sahib by Sadri-Reyasat and show who actually subverted the constitution and that inferences drawn by the prosecution were illogical.

(The Court rose for the day.)

Issued by
J AND K LEGAL DEFENCE COMMITTEE,
JAMMU.

Copy forwarded to the
for perusal and publication.


(G.M. SHAH)
SECRETARY AND COUNSEL,
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHHEEDGUNJ- SRINAGAR
K A S H M I R

phone:
Srinagar. 707.

Jammu. 5133.
New Delhi. 32202.

Branches:
1. The Dawn, Canal Road,
Jammu.
2. 81/48 Diplomatic
Enclave,
New Delhi-21.

2nd June, 1961.

THE KASHMIR CONSPIRACY CASE
Resume of Mirza Mohammed Afzal Beg's arguments.

.....

Resuming his arguments today Mr. Beg told the court that he proposed to deal with the events that led to coup d'etat of 9th August, 1953, and also to some events preceeding this coup. These according to him were relevant because:

- (a) The dismissal of the Prime Minister of Kashmir was illegal and unconstitutional.
- (b) The facts connected with the coup before and after had a great impact and connection with the 9th August action.
- (c) These were closely connected with the defence of the case and from this the malice of the prosecution against the accused could be shown.

Mr. Beg told the court that he had already exposed the prosecution story and the worth of the documentary evidence and now he wanted to explain the purpose that was behind the prosecution against persons of high status and repute.

Quoting paras 1, 2, 3, 4, 5 and 8 of the complaint made by the Inspector General of Police Mr. Mehra, Mr. Beg stated that in the arguments one or two things were conspicuous. Prosecution did not refer to the Sec 121 and also they did not refer to the complaint. This was a peculiar thing. The consensus was that (1) Evidence had no relation to Sec. 121 and (2) Whatever had been put in the complaint had no connection with the accused. The petition of Complaint provides the solid material that the accused and their relatives had been victimised, without any rhyme or reason.

Ellucidating first two paras Mr. Beg said that they refer to the events of 1947. Whatever the wrong of that act, the role that the accused and Sheikh Sahib played at that time had gone down in history. Referring to the para 15 of his written statement Mr. Beg told the court that it detailed out the part played by accused in those days of mass killings outside Kashmir and how the accused under the leadership of Sheikh Sahib served the country and upheld the principles of freedom movement.

He added that lots of things were in the personal knowledge of Sheikh Sahib and Mr. Beg himself and it was impossible for them to bring witness about that. They had not related the whole story as yet. Supreme Court attaches importance to the statements of the accused u/s 342. Mr. Beg asserted that they were the victims of 1947 themselves and thus relevance of prosecution in dragging these matters in this petition was questionable. It was intriguing as to why these paras were there knowing that the aggression was directed towards the movement led by Sheikh Sahib, asked Mr. Beg and added, that, "The mention of these two things was extra-ordinary. Serious notice has to be taken of these facts. They cant be without meaning. The real thing was that these have been deliberately put for political purposes." Prosecutors want to fight a battle with Pak and they want to settle their score with Pak; asserted Beg Sahib and also remarked that prosecution wanted to whip up a cold war atmosphere in order to rouse passion and sentiments for securing through courts of law a judgment against the accused. Further he told that through these excited emmotions prosecution

-2-

wanted to wreck vengeance against them and notably against Sheikh Sahib by dragging the Pakistan and connecting Pak with the movement. Mr. Beg asserted that it was so because there were political differences and that they had certain political ideals which were not in consonance with powers that be, otherwise there was no reason for having these paras in the complaint.

Referring to Para 8, Mr. Beg said that the prosecution, having made their mind all the more clear that Mr. Beg founded the J&K Plebiscite Front with the support of Pakistan. Admitting that the J&K Plebiscite Front was found by him, Mr. Beg denied that Pakistan had any indirect or direct concern with it. It was set up only to achieve right of self-determination and that was the basis of claim and that led in the end to the present Prosecution of the accused. He termed it as a political clash. Whatever happened before August 9 was also the result of clash of political views. The matters that preceded August 9 were also the result of a clash of opinion with the powers that be, asserted Mr. Beg.

Mr. Beg asked what was the reason of raid in 1947. He said that it was an onslaught on the right of self determination of Kashmir. Referring to government of India White Paper on Kashmir 1948, Mr. Beg stated that this also said the same thing. Government of India sent forces to protect this right of self-determination which was the anchor sheet of the Mass movement led by Sheikh Sahib since 1931. Further he stated that Sheikh Sahib was the symbol and he was the President of State People's Conference also. After Sheikh Sahib's release in Quit Kashmir Sheikh Sahib found the sub continent partitioned. Issue of the accession was looming large and Sheikh Sahib addressed people in Kashmir in September, 1947 and told them "The final arbiters of their fate are the people themselves".

On October 10, 1947, he gave a Press statement in Delhi which was published by Statesman and reproduced by White Paper of Govt. of India as under:

"The Kashmir leader stated that despite the opposition of the League to the popular demand for self-government implicit in the "Quit Kashmir agitation" the attitude of his party would not be governed by passion.....only the good of the State would count. He asserted that he would not brook dictation from Pakistan or Coersion from India. The first concern was the attainment of self-government, so that the people armed with authority and responsibility, could decide for themselves where their interests lay."

Mr. Beg stated that Sheikh Sahib made it clear that he would not allow Pakistan or India to dictate the terms but people alone would decide their fate. Sheikh Sahib further stated that if 40 lacs were by passed and State acceded to India or Pakistan he would raise the banner of revolt and face a struggle.

Court: Where from are you quoting?

Mr. Beg: From the White Paper Sir.

Arguing further he stated that this stand matured into an agreement between Sheikh Sahib as representative of people of Kashmir and the government of India otherwise they would not have given a place to this in their White Paper. After long talks this gentleman's Agreement was made and Pt. Jawahallal addressed Constituent Assembly on this very fact on November 25, 1947

"We have gone to Kashmir to protect the people and as soon as this duty is discharged our forces need not remain there and we shall withdraw our forces.After that let the people of Kashmir decide and we shall accept their decision."

Quoting the above, Mr. Beg stated that this was the meeting ground between Sheikh Sahib representing the people and Indian leaders representing the government of India. India unreservedly accepted the right of self-determination. That was the only force that effectively saved Kashmir in 1947, affirmed Mr. Beg and that was borne out by Pt. ji himself. Further he said that with this community of outlook and oneness of mind conditions were stabilised.

and peace was restored. Kashmiris were told that as soon as raiders were withdrawn they would get the opportunity to decide their future. Plebiscite was considered the only correct way of solving this problem, asserted Mr. Beg. Ellucidating further Mr. Beg said that when the raiders came whole State was disrupted and the Military strength crumpled, Maharaja became a fugitive, his troops were hacked, Prime Minister of Kashmir and the other Ministers escaped. Mr. Beg asserted that this narration had a moral aspect. Sheikh Sahib and his colleagues stood up, and saved the country and the part of State which was on this side of cease-fire line could not easily be occupied. Everyone realised that nobody could save the State and therefore Sheikh Sahib was made the Head of the administration by a proclamation on 30th October, 1947. Mr. Beg read out from the Prosecution of India and Maharaja His Highness and thus Maharaja also became a party and he asked Sheikh Sahib to save the country, otherwise the relations of Sheikh Sahib and Maharaja were known because some months earlier Sheikh Sahib was sentenced 9 years imprisonment. Three parties i.e. Sheikh Sahib on behalf of the people, Maharaja of Kashmir and government of India met on the common basis, that sovereignty vests with the people. That basis Sheikh Sahib agreed to slavage the State and restore normalcy.

Beg Sahib referred to the application of Maharaja to India for accession dated 26th October, 1947 wherein Maharaja wrote to Lord Mountbatten that he wanted to form an interim government with Sheikh Sahib as his Prime Minister. Mr. Beg stated that it was in pursuance of that agreement that Sheikh Sahib was made Head of Administration and later the Prime Minister of Kashmir. Other publications of the government of India corroborate this fact. At that time such a risk meant to a jump in the fire. When normalcy was restored and the minorities rehabilitated and achieved Maharaja realising many other things - i.e. vested interests wrong advice etc. issued an important proclamation on March 5, 1948 for forming an interim government comprising Prime Minister appointed by him and the other Ministers to be appointed on the advice of the Prime Minister. On March 5 the Emergency Administration ended and a regular government was formed because normalcy had been restored. This consensus of mind for the final disposal of the State was the Common ground for the three minds and Sheikh Sahib was recognised as a symbol of the freedom movement.

Mr. Beg requested the court to note that there was good deal of evidence to show that Pakistan all along objected to Sheikh Sahib becoming the Head of Administration and the Prime Minister because they did not want Plebiscite and India stood firm for plebiscite. Mr. Beg asked that he was astounded to know as to how prosecution holds that Plebiscite demand was Pakistan sponsored. Beg Sahib remarked that even today Pakistan was not particular for plebiscite and therefore allegation of prosecution was wrong.

Further Beg Sahib told that Sheikh Sahib at the risk to his life saved the State and accepted Prime Minister on the understanding that the people would be given the right to determine the future of their State themselves. He appealed to the courts of law to judge for themselves the plight of the pledges if agreements were broken and forgotten in such dubious ways. Sardar Patel had sent a word to Maharaja that India would not take it amiss if Kashmir accedes to Pakistan, asserted Mr. Beg and retorted was it not treason then?

Mr. Pandey. It is not on record.

Mr. Beg. History cannot be placed on record. Stating further Mr. Beg said, that there were rulings that historical events could be referred to. The view point of Sheikh Sahib and all his colleagues was that Kashmir should go to India or Pakistan by free vote of the people and not by an act of Maharaja or sword of raiders.

4

Mr. Beg stated it became now obvious that objections and difficulties were set forth to wriggle out from that agreement. All agreements had had the sine-que-non that people would be final arbiters of Kashmir, asserted Mr. Beg.

Beg Sahib then stated that due to uncertainty things became grave and complicated after some time in the whole State and it was felt by all in the Government, National Conference and elsewhere that this uncertainty would end when Kashmir question was settled finally. National Conference Working Committee started to discuss the ways and means of solving this knotty problem because intrigues and conspiracies were being hatched into the State due to this uncertainty and life had become perilous, asserted Mr. Beg.

National Conference formed an eight member committee and gave various alternatives for solving this issue. First and foremost was Plebiscite stated Mr. Beg. Beg Sahib then referred to para 57 of his statement and said that Maulana Azad was informed about it, because Pandit Ji was out India at that time. He further said, that Dixon Proposal was considered by Bakhshi Gulam Muhammed most practicable, and honourable and feasible solution and when Panditji returned he was also informed accordingly. He was going to Pakistan to discuss Kashmir issues. He himself had suggested to explore all alternatives. Beg Sahib further stated that many things happened after this; (1) The virulent Praja Parishad Movement was called off; (2) The press was keyed up; (3) Sheikh Sahib fixed the meetings of Working Committee and the General Council to review the political situation; (4) Sham Lal Saraf was suspected of having connived at certain instances of corruption and maladministration and was asked to submit his resignation; and (5) In the darkness of Aug 9, 1953 coup was staged. Mr. Beg asserted that this was done in spite of the fact that; (1) The Government of India was informed about all the alternatives; (2) There was great necessity of solving this problem. Further Beg Sahib stated that this conspiracy was enacted in the night when Sheikh Sahib had gone to Gulmarg for a weekend, where his house was cordoned and order of dismissal, warrant of arrest and a copy of the memorandum of other three ministers was handed over to him in one envelope.

Commenting on the observations of Mr. Pathak that, "the conspiracy was hatched in darkness" Mr. Beg stated that how true and prophetic it was when this conspiracy against Sheikh Sahib and his colleagues was enacted. Even Sadri Riyasat did not inform his Prime Minister that he was allowing to have a coup in Kashmir. The conduct of the conspirators was obvious from this and that establishes the factum of conspiracy against Sheikh Sahib and others affirmed Mr. Beg.

What happened after 9th August was a matter of history said Mr. Beg after referring to his own statement and the statement of Kh. Ali Shah in this connection. He added that there was wild spread shootings, mass arrests, detention of large number of lawyers, M.L.As and M.Ps. Citizens were bundled in thanas and given worst treatment by CRP and CIA. In that atmosphere a session of the Constituent Assembly was convened and 2 dozens members were put behind the bars. The whole State was terror stricken and in that atmosphere confidence vote in Bakhshi Gulam Muhammed was secured, remarked Mr. Beg. Further he said that Sheikh Sahib somehow heard it and from Udhampur Jail requested President of India, Prime Minister of India, President Constituent Assembly to allow him to face the vote of no-confidence. This was denied and this was another important fact that the conspiracy with the backing of the Government of India was carried on, asserted Mr. Beg. Abnormal methods in regard to dismissal, arrest and vote of confidence against Prime Minister were used and this proved that dismissal and arrest were illegal and unconstitutional I affirmed Mr. Beg.

AFTER THE BREAK.

Resuming his arguments Mr. Beg showed the relevant portions of his written statement which contains that Sardar Patel had written to Maharaj "that Government of India would not take amiss if Maharaja choose to join with Pakistan"

Mr. Pandey: That may be a his assertion but that is not on record.

Mr. Beg: In due course necessary law will be produced. It was impossible to produce Maharaja or Sardar Patel because they would be somewhere else in conference.

Mr. Beg further said that these alternatives of 8 member Committee were conveyed to Government of India with the condition that people will be asked to ratify anyone that was thought practicable. Making a passing reference to the events that (1) Maharaja formed a responsible Government. (2) Transferred power to Youvaraj Karan Singh, (3) Karan Singh convened the Constituent Assembly (4) Eight men committee of National Conference. (5) Abolition of big landed Estates Act, (6) Abolition of Hereditary Rule. Mr. Beg stated that all these had a close relation with accession issue and told the court that he would take these matter in due course.

Quoting from Mr. Pathak that "there was rift in the Cabinet and Sadri Riyasat took action" Mr. Beg refuting it said that there was nothing on record about it and no judicial notice could be taken but on the other there was no rift in the Cabinet. Mr. Beg asserted that he attended every Cabinet meeting and every Minister expressed fullest confidence in Sheikh Sahib. He in support of this quoted from his oral statement. Mr. Beg stated that this fact also proves that there was a conspiracy against Sheikh Sahib and others. He asserted that Sadr-i-Riyasat had no justification and no treason to ----- dismiss his Prime Minister.

Commenting on the second observation of Mr. Pathak, "that majority of National Conference was in favour of Bakhshi Ghulam Mohd." Mr. Beg said that it was the result of his imagination alone and there was no Judicial proof about it as well-said that in spite of illegal action of Sadri Riyasat, Sheikh Sahib continued to be the President of the National Conference.

Commenting on other observation of Mr. Pathak that after dismissal of Sheikh Sahib his Deputy became the Prime Minister. Mr. Beg remarked that this was not heard of anywhere. It was not a matter of service rules but a democracy and certain obligation and duties placed by the constitution. He stated that the Constitution was subverted and seeds of lawlessness were sown and to cover this all those cases against those who would expose their betrayal of the Constitution were instituted.

Coming to the Constitutional aspect Mr. Beg referred to Kashmir Constitution and quoted from the Constitution that Sadri-Riyasat was honour-bound to uphold, defend and preserve the constitution. Sadr-i-Reyasat instead violated the oath and tore the constitution into pieces affirmed Mr. Beg.

Discussing the constitutional aspect of this action Mr. Beg said that prosecution stated that Sadri-Riyasat dismissed Sheikh Sahib under section 16 of the General Clauses Act. Mr. Beg quoted the relevant section and said that the greatest limitation was provided by the words, "unless a different intention appears." and said that in law there were many a synonymous expressions e.g. "Unless otherwise provided for, unless there is anything repugnant in the context" and here in this section the expression used requires due consideration. The words were very wide. This was a rider on the powers of dismissal placed by this Act and so it was not possible for Sadri Riyasat to dismiss Prime Minister under this section and more so when there was a Constitution governing the State of Jammu and Kashmir. Mr. Beg asserted that constitution was a supreme law of the land and other laws were subservient to it.-----

Mr. Beg said that this could be done under the old constitution of Kashmir in which His Highness had inherent powers and in which sovereignty was vested in him. Maharaja by that Constitution preserved all prerogatives and all ministers under that constitution were responsible to Maharaja. Mr. Beg remarked that before Independence their lot would have been better under Maharaj because he would have only dismissed them and not imprisoned them indefinitely as was the case now.

Elucidating further Mr. Beg stated that in 1952 this Constitution was amended and there came a development in the whole set up. This amended Constitution fettered the powers of His Highness. He had to consult his ministers. Inherent powers were deleted. Supervision and direction were vested in the Council of Ministers. Section 7 provided that Council of Ministers shall consist of Prime Minister appointed by Sadri Riyasat and other ministers appointed on the advice of the Prime Minister and they shall be responsible to the legislature.

Comparing the two Acts Mr. Beg stated that it was the legislature alone that could oust a minister on a motion of censure and explaining the expression, "responsible to legislature" he told the court that under this new act the Council of Ministers was not responsible to the Sadri Riyasat but to the legislature of the State and further said that Indian Constitution provided this very thing.

Referring to Basu's Commentary on Constitution of India Mr. Beg said that while discussing Art. 75(2) of the Union Constitution -- "the ministers shall hold office during the pleasure of the President" -- the author has completely lost sight of the fact that in Kashmir Constitution as in force in 1953, "the pleasure" clause was deliberately omitted. The Ministers here did not hold office during the pleasure of the Sadri Riyasat. They were collectively responsible to the legislature and none else. Basu's view, therefore, had no relation to the Kashmir Case. Mr. Beg then referred to 3 and 4 cases of dismissal of Prime Ministers and stated that they were Allabux of Sind and Fazal Huq of Bengal and said that Allabux case came under Government of India Act 1935 and the Governor General and Governor could act in their individual capacity in relation to their special responsibilities. In Fazal Huq's case it was not known whether Pakistan had any constitution except Government of India Act 1935. Here in Kashmir the position was different, and even Basu says that it was an extreme interpretation of Art 75(2) that, the Ministers shall hold office during the pleasure of the President more so when Kashmir Government had no such provision in it. According to Mr. Beg Sadri Riyasat's action was not normal and thus prosecution could by no stretch of imagination claim that Sadri Riyasat could dismiss his Prime Minister. Beg Sahib further stated that if Sadri Riyasat had any information that Sheikh Sahib had lost the confidence he could at best advise Sheikh Sahib to get a vote of confidence or Bakhshi Gulam Mohammed to get vote of no-confidence against Sheikh Sahib. He asked what was done in the dark hours of 9th August and said that a conspiracy was hatched at exact 4.20 in the night and the constitution was subverted. On whose advice the Sadri Riyasat did all this was not a mystery now remarked Mr. Beg. Further he emphasised that Sadri Riyasat could not act on the advice of any other minister except the Prime Minister, because by doing so, a head of the State affiliates himself with factionalism.

topic Lately there was a controversy in India about powers of President said Mr. Beg and Mr. Pathak spoke on that in crystal logic and said that President had to act on the advice of his council of ministers through the Prime Minister. Mr. Beg hoped that Mr. Pathak should have given the same version here.

In America President was not responsible to the congress but in every Parliamentary form of government, like United Kingdom, and India Ministers were responsible to the House of people and it was essential for them to be members of the legislature remarked Mr. Beg. No President, no Raj Parmukh and no Sadri Riyasat could dismiss Prime Minister and this action of Sadri-Riyasat was nothing but betrayal of the constitution. Mr. Beg expressed surprise at the fact that Prime Minister was not allowed to appear before the House and said that this was unheard of in democratic history of various countries and this could not be expected from a big democracy like India which watched the murder of Democracy in Kashmir. He termed it as second violation of constitution.

Third violation asserted Mr. Beg was that Sadri-Riyasat made Bakhshi Ghulam Mohammed Prime Minister and asked how could Sadri-Riyasat know that Bakhshi Ghulam Mohammed had the confidence of other 75 members. This all was done on August 9, 1953 and this established the fact that there was a conspiracy going on against Sheikh Sahib and his colleagues asserted Mr. Beg. India did not help Sheikh Sahib at this stage. Bakhshi Ghulam Mohammed could not have been at once called if there was not a pre-planned conspiracy. God forbid if Pt. Ji was dismissed and detained could anyone imagine that some other man will be asked to form the ministry if things would not be preplanned asked Mr. Beg. He remarked that Pt. Ji was India as Sheikh Sahib was Kashmir because both were symbols of aspirations of the people.

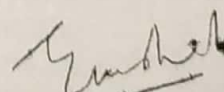
Referring to Mr. Pathak's observations that "if Sheikh Sahib was not called to the Constituent Assembly one vote would not have mattered." Mr. Beg said that this argument was grotesque in view of the conceptions of democratic values and more when vote of confidence was to be sought against a man who was pitch-forked surreptitiously. Mr. Beg submitted that Sheikh Sahib was unconstitutionally dismissed. His Cabinet was dissolved and constitution was subverted only because Sheikh Sahib was demanding the right of self-determination for the people. Further intrigues were being carried on so that the accused could be involved in these fictitious cases and voice of the people could be stifled. Recently Indian Papers cried hoarse that king of Nepal murdered democracy remarked Mr. Beg and said that Charity begins at home. He remarked that not a tear was shed for Sheikh Sahib when democracy was murdered by Sadri-Riyasat here. This again shows that there was a deep laid conspiracy against Sheikh Sahib and his colleagues because they demanded that people alone can settle the fate of their country.

Mr. Beg winding up the argument for the day said, "There have been no lapses on our side and we are there where we stood before. The peace of Sub-Continent was more dear to us and it could be achieved when Kashmir Problem could amicably be solved between all the parties and not by Prosecuting a person and his colleagues who had invited India to be on this soil."

(The Court rose for the day)

Issued by
ALL J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Copy forwarded to the _____
for perusal and publication.


(G.M. SHAH)
SECRETARY AND COUNSEL,
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ- SRINAGAR.

K A S H M I R

phones:
1. Srinagar. 707.

2. Jammu. 5133.

3. New Delhi. 32202.

Branches:

1. The Dawn, Canal Road,
Jammu.

2. 81/48, Diplomatic
Enclave,
New Delhi-21.

3rd June, 1961.

The Kashmir Conspiracy Case.

Resume of Mirza Mohammed Afzal Beg's arguments.

.....

Resuming his arguments today Mirza Mohammed Afzal Beg stated that yesterday he dealt with the legality rather illegality of the dismissal of the Prime Minister on 9th August, 1953 by Sadri Riyasat. He requested the court to draw a contrast between the old Constitution Act of Sept. 39 and the new Constitution Act of 52. The first Constitution Act was in force upto 1947 and the second was in force in August 1953. Sec 7 of the both Acts was in contrast. In the first Act the section provided that Ministers will be appointed by His Highness and will be responsible to him. 1952 Constitution recasts this section fully and provides that His Highness will appoint Prime Minister and other Ministers on the advice of the Prime Minister and this council will be responsible to the legislature. The holding of the office at the pleasure of His Highness ceased. The pleasure clause was deleted. Inherent powers of His Highness were completely omitted. The second aspect of the contrast was that this new Act was framed in consultation with the Govt. of India rather the Government of India was the framer of this new constitution and of course, Mr. Beg remarked, they were consulted. With a view to safeguard future constitution dangers these amendments were carried. Government of India records would fully bear this. Mr. Beg said that because they had carried a struggle which as a symbol was against the ruling prince, therefore, these safeguards were kept there. Pleasure clause in spite of being in existence in Indian Constitution had been deleted from the Kashmir Constitution for this very purpose. So whatever happened on 9th August happens against the Constitution and must have happened with the full knowledge of the Government of India.

Mr. Beg asserted that pleasure clause though omitted here gives by no stretch of imagination powers to the Head of the State to dismiss a Prime Minister. That clause would not give the President of India powers to dismiss Prime Minister of India. That pleasure was to be exercised democratically. It was not an autocratic pleasure but a democratic pleasure. Kashmir Constitution omitted this and Mr. Beg said that they had guarantees from Government of India that Constitution would always be respected.

Referring to the vote of no-confidence taken on 5th October 1953, Mr. Beg stated that it was a vote of confidence in favour of Bakhshi Gulam Muhammed and not a no confidence vote against Sheikh Sahib. This was a novel procedure. The question arises as to what happened to the Prime Minister of 1953, when records do not show that he was legally removed. Mr. Beg remarked that law may conclude that he was still there. Further Mr. Beg stated that Legislative Assembly had rule making powers under section 13(3) under which rules have been made for the removal of Ministers. Any action against a Minister could have been taken under that rule but nothing of that kind was done.

Sheikh Sahib was dismissed sometime in the night of 9th

2

August 1953. Referring to item 4 of Complaint Mr. Beg stated that the the Complaint states that on his arrest at midnight of August 9, 1953 Sheikh Sahib conspired with accused to overthrow the legally instituted Government. Mr. Beg said if this was taken as the starting point of the conspiracy then it appears to be but poetry and not a fact. Mr. Beg asked where were his relations, friends and the accused at that time who conspired together to overthrow the Government, and added that Sheikh Sahib might not even have thought at that time as to who was the Government. Mr. Beg stated that prosecution had not enlightened anyone on this point in spite of its voluminous evidence of 229 witnesses and 930 documents. This was a grossest fabrication, remarked Mr. Beg.

Mr. Beg stated that this para was important from other point also because it leaves accused surprised to see as to how this offence as alleged could physically be possible on that day. Beg Sahib asked how the contact with Pakistan was subsisting at this time and how could that be possible. Beg Sahib remarked that as the evidence was wanting the presumption would be that the whole story was a fabrication. Mr. Beg further remarked that two conclusions alone follow; (1) Whatever happened had no connection with the allegations and thus prosecution could not link them with the happenings of 1947. The link clipped the bubble of the prosecution story would burst; and (2) Accused had no contact with Pakistan and this fact emerges from the evidence and the Complaint.

Sheikh Sahib's dismissal was apparently so sudden and illegal and if it had to do anything with the antecedents then those antecedents were in Kashmir and in Delhi and not in Karachi, asserted Mr. Beg. He asked whether a person could start a conspiracy automatically like a machine as soon as he was arrested. If there was such a conspiracy it should have been sometime before 9th August, 1953 because that alone would be physically possible and the question would be against whom and against whose Government. Conspiracy was not a press the button affair remarked Mr. Beg. The Government was headed by Sheikh Sahib and Mr. Beg said that he was a member of that Government and some of the accused were Deputy Ministers of that Government. The logical conclusion would be that Sheikh Sahib was conspiring to overthrow his own Government and this would be fantastical conclusion. The complaint would lead them, remarked Mr. Beg, to believe that it was Sheikh Sahib who had sanctioned this Prosecution. That too was fantastic. Mr. Beg submitted that under these circumstances no judicial notice could be taken of such allegations.

Mr. Beg stated that having established that the act of dismissal was illegal and unconstitutional it was obvious that the appointment made by Sadri Riyasat after 9 Aug, 1953 was also illegal. He further stated that the law that put Govt. in office in that night would have no legal entity and as such there would be no offence against a non-existent entity. Mr. Beg stated that the plea of prosecution that subsequent elections remedied the flaw, was incorrect. He told the court that he will deal with this point later.

Mr. Beg stated that Sadri Riyasat could not dismiss his Prime Minister and could not select anyone from the National Conference to take his place because Sheikh Sahib till that day continued to be the President of the National Conference and the argument that after the President his Vice President could be called was fallacious.

Referring to paras 54 and 57 of his written statement
contd on page 3.

Mr. Beg continuing his arguments further referred to Paras 54 and 57 of his oral statement and said that National Conference appointed a 8 men Committee to find how Kashmir problem could be solved to the satisfaction of all the parties. Mr. Beg said that this Committee gave four alternative to government of India subject to the condition that the will of the people would be ascertained and final decision would be taken accordingly. Sheikh Sahib had fixed the Working Committee and General Council meetings and before these were held he was arrested and thus democratic methods were torpedoed by opposite parties with full backing from Delhi. The intention and determination was not to allow them to do anything democratically asserted Mr. Beg. This action was followed by terror killings, third degree methods and violence to which whole of Kashmir was subjected. Mr. Beg here referred to the oral statements of Khawaja Ali Shah and to his own statement which fully explain the conditions of that time in Kashmir. It was at the bayonet that vote of confidence was sought and also in the absence of Sheikh Sahib such a vote was void and null asserted Mr. Beg. Referring to the observations of Mr. Pathak, that, "this defect was cured after general elections, Mr. Beg stated that this argument was illogical, because:

order (1) 9 August action being illegal and contrary to constitution and convention this was void ab initio and had no existence at all. Elucidating this he told the court that it actually would mean that a reader of the court can dismiss the Prime Minister because in the eyes of constitution Sadi-Riyasat was as incompetent to dismiss Prime Minister as a reader of the court. An act done by a person not competent to do would be void. Ist Class Magistrate can issue a warrant of arrest against any person and can this be done by a reader asked Mr. Beg. It would not have a force of law. Thus anything void ab initio cannot be regularised. This might happen where rule of jungle prevails. Sheikh Sahib's dismissal was illegal. Sadi Riyasat could at the most ask his Prime Minister to secure vote of confidence from the house.

(2) Assuming that Mr Pathak's argument was correct. The election was held in July 1957 and the act of regularisation thus took place in 1957 and whatever followed from 53 to 57 was bad in law, illegal and unconstitutional. If this argument of prosecution was accepted whatever was done in this period was illegal and more particularly this covers the whole period of conspiracy and therefore no action between this period could be valid in law. No act against constitution can be regularised because there was no such provision in constitution.

Mr. Beg stated that he attended the meeting of Assembly in 1958 and views of his party were placed before the Assembly. No democratic process was allowed. Hurriedly the constitution was passed and now prosecution maligns them that they subverted the constitution. Sheikh Sahib continued to be in detention at that time and other detenus were released from detention and brought in the Assembly. Mr. Pathak tells the court that the vote of one man would not have mattered and Mr. Beg retorted that this was a misconception of democratic process and conventions. He remarked that a member of the Assembly has not the right only to vote but he has the right to be there, speak and convass. That right was vital in the case of Sheikh Sahib who was erstwhile leader of the house and continued to be defacto leader. The other party knew that his presence there would have tilted their basis altogether and so he was in detention. This was thus loss of entire vote remarked Mr. Beg. Mr. Beg termed it as double robbing because it deprived Sheikh Sahib to vote and other members to hear him. Whatever was being said throughout the world was contrary to real facts and was meant to be a comofaluge to whatever was happening in this small Muslim dominated State.

sept (3) With this background a constitution was passed and they were told to accept it stated Mr. Beg. Mr. Beg stated that this constitution itself did not lay any claim to finality. Referring to section 48 Mr. Beg stated that this section leaves 25 seats vacant for other side of the State and this permanent vacancy was a proof positive of the fact that this constitution was a provisional arrangement and the final deposition of the State had not yet been

affected. In that area for which these vacancies had been kept election, no poll has been held and no electoral Rolls had been made. The administration of the Kashmir government did not open there. A partial constitution could not claim to be final, and thus this constitution was provisional. Quoting from the document Mr. Beg said that if it were a case of South Korea or West Germany the case would have been different because there the constitution had been framed for those particular areas only. Here the constitution was drafted for the whole J and K State. It was a self contradiction constitution. It meant to apply to Gilgit also, therefore, in view of section 48 of this very constitution this was a provisional document.

Referring to act 370 of the Indian constitution at this point Mr. Beg stated that the heading of this article was 'temporary transitional provision' and stated that it was most important because this supported his contention. Further support to this contention Mr. Beg claimed could be got from the speech of Sir, G.S. Ayenger who moved in constituent Assembly this article for incorporation in the constitution of India.

(4) Besides this, this constitution could not claim to have finally disposed of Kashmir accession because Security Council was seized with this problem. Mr. Beg stated that cruel memories were day by day reminding this hard fact because there was a cease fire agreement and United Nations observes were present in this State. The fate of the State was pending otherwise they had no business to be here. These observers were in the midst of J&K territory. Their job was to watch the peaceful conditions until the final disposal of the State was achieved by ascertaining the will of the people. In support of his claim, Mr. Beg referred to a statement of Pandit Ji in Parliament dated 26th June 1952 when the Prime Minister told the parliament that the constitutional developments in Kashmir could not take place because of United Nations.

Summing up Mr. Beg stated that from all this it was apparent that:

1. This constitutional was provisional.
2. The final disposal had not yet been made.
3. This was supported fully by article 370 of the Indian constitution because this was the one article which was provisional.

Mr. Beg stated that both in law and in fact constitution Assembly of Kashmir could not affect the final disposal of Kashmir.

5. Then further explaining his view point Mr. Beg stated that this Constitution was made 6 years after, the Constituent Assembly was invoked which was an abnormal life for a Constitution Making Body. Mr. Beg then referred to the pressures under which it was made. He told the court that in 1957 general elections were held. The Prosecution Counsel accused them that they advocated boycott of elections and thus subverted the Constitution remarked Mr. Beg. Mr. Beg termed it as most illogical. These elections were held when Sheikh Sahib, he himself, Sofi Sahib, Khawaja Ali Shah, Haji Mohd. Ishaq presidents of the Plebiscite Front were in jail. Most of the working committee members of the Plebiscite Front and its office bearers were imprisoned and was the case of political conference workers as well and above this all Preventive Detention Act was hanging like the Damocles sword. Mr. Beg remarked, "were the intentions of powers that be fair then the elections would not have been held with Sheikh Sahib and other political leaders and workers in detention."

The intention was that Sheikh Sahib should not be out at the time of elections otherwise he would have been released just at the time of election and not after hardly 6 or 7 months in January, 1958. Referring to elections in Maharashtra Mr. Beg stated that at the time of elections there doors of the jails were thrown open to know the mind of the people. He repented that that was not the position in Kashmir because India herself did not yet consider Kashmir an integral part.

6. Mr. Beg stated that if it was a desire that they should participate in the elections then the desire should be honest, elections should be fair and they would be the first persons to

accept the verdict of the people. The tragedy was that with this background they were alleged to be subverting the constitution remarked Mr. Beg. Mr. Beg stated that it was a constitutional right of everyone to vote or not to vote. He remarked that it was fantastic to say that boycott was unconstitutional. That constitution which compels every voter to vote was not a democratic constitution. Mr. Beg asked why in Kashmir this boycott was termed as unconstitutional when congress during British period boycotted elections many a times. The inference was an illogical one and Mr. Beg remarked that Mr. Pathak could not help himself because he was arguing a bad case.

AFTER THE BREAK

Presuming his arguments after break Mr. Beg told the court that it was fantastic to charge them of subverting constitution because of boycott and more particularly when Sheikh Sahib and others were in jail. Making a brief reference to the expression "will of the people" Mr. Beg stated that will of the people cannot be considered will of a part. 12 lac people across the fire line were also included in J&K State and they were not represented in this so called registration of the will of the people, therefore the will of this house cannot be the will of the people of the whole State and thus the decision of Constituent Assembly of Kashmir could be decision of the people asserted Mr. Beg. The will of all the people meant the will of the country and thus a part could decide for the whole and any such decision would be void in law and by constitution. Elaborating it further he said that it would mean "Babarsinghpora can decide the fate of the whole State. This would lead to confusion and chaos. Sovereignty was indivisible and collective affirmed Mr. Beg. Here he referred to the White Paper of government of India 1952 which states that, "no Kashmiries will be deprived of the right of vote." Mr. Beg then referred to Prime Minister of India address in the Parliament on 12 th February 1952 wherein Prime Minister of India stated that, "people of Jammu and Kashmir would decide their future themselves as a whole." Mr. Beg commenting on this stated that factually government of India was committed to this decision and said that the will of the people was not taken as whole and thus the decision of Constituent Assembly was void.

Mr. Beg then discussed whether Kashmir Question was finally disposed of. He said that the relevance to argue this matter here was:

1. "That the para 8 of the complaint refers to it."
2. "The complaint charges Plebiscite Front and Mr. Beg himself that they wanted to have plebiscite."
3. "From the complaint and evidence it was endeavoured to prove that plebiscite Front was Pak-Sponsored Organisation."
4. "Bonafides of the accused were to be shown."
5. "The Prosecution charge that Sheikh Sahib changed was to be refuted."
6. "That insistence on this demand was the motive behind this malicious Prosecution against the accused."

Commenting on this Mr. Beg submitted that on these grounds the case had to be viewed and he was aware that this court could not pronounce on plebiscite but the court had to see whether allegations of the prosecution against the accused were correct. The case was of a political nature and all treason cases were of political nature. Political matters were bound to come in such cases. In this case prosecution brought political matters itself and good deal of political propaganda was carried by complaint and evidence and it was also used by one party in United Nations for political object, remarked Mr. Beg.

Mr. Beg remarked that after Independence there were political parties and their policies carry on their day to day work and preamble of constitution of India guaranteed this right to every citizen and Kashmir government also guarantees this. Preamble secures the political justice as well which was the self determination and self fulfilment of the people. Mr. Beg stated that the courts

were enjoined to safe-guard the Constitution because Courts were bound by the Constitution to dispense justice. According to preamble the courts had to do political justice as well. Mr. Beg then, as a background mentioned some historical facts:-

1. "On August 15, 1947 out of British India two independent Sovereign States were created by Independence of India Act 47. (2) This Act recognised that certain territories predominantly Muslim would form as Pakistan and rest as India. (3) There were some other territory known as Indian States and rest were ruled by various Princes. In regard to these States section 7 laid down that on August 15, British sovereignty shall lapse and all relations with British crown would cease and British paramountcy would lapse. Their position was left vague. Mr. Beg referred to Mr. Menon's Book "Integration of Indian States". Mr. V.P. Menon was Secretary of States Government of India under Sardar Patel and became later Governor of Orissa.

Mr. Beg stated that after British Sovereignty lapsed there was difference of opinion whether Princes became Independent. Great Britain did not say anything and thus it was imagined that Princes could decide State's future. There was tendency on the part of the Princes to declare Independence and thus endanger India. National Congress opposed this and a considerable political pressure was brought on States by Congress and Indian Government. Govt. of India and Congress held that princes had not become independent by lapse of paramountcy. Muslim League against this held a contrary view and said that princes were competent to decide State's future. A formula then was agreed between Congress and the League to the effect that, a Prince in the matter of accession should take geographical contiguity and communal composition into consideration. Large number of States settled their accession. In this regard to certain other States, Congress and League reached an agreement that in case Prince and the majority population went professing different religions the accession should be decided by the will of the people, because the idea was that majority may accede to any country irrespective of the religion. Because of this expectation there was a referendum in N.W.F.P. a Muslim majority province administered by Congress. It was not only agreed to but executed.

Court: In NW.F.P. there was no prince.

Mr. Beg: Congress administration was there. I said inspite of religion it was expected that people might vote other way - though partition had been done on "communal lines".

Continuing further, he said, Negotiation Committees were set by Constituent Assembly of India to negotiate with the Princes the question of accession and terms of administration. Constituent Assembly decided that pending final accession there should be standstill agreement between the Centre and the States. Jammu & Kashmir State had a standstill agreement with Pakistan but India did not enter into that agreement.

After giving this background Mr. Beg stated that accession was negotiated with the Committee set up by the Constituent Assembly. So far Kashmir was concerned there was neither any negotiation nor any standstill agreement. Kashmir did not take any decision of accession on the fixed date of August 15 as other states did.

Mr. Beg then referred to the terms which were to govern the accession and agreed by Congress and League and quoted the example of Junagadh who had acceded to Pakistan. Mr. Beg quoted from Mr. Menon's book stated that Government of India became vexed because the will of the people had not been ascertained in Junagadh. Government of Pakistan was approached that they should honour the agreement and allow will of the people to be ascertained. Later on some sort of Plebiscite was held in spite of the fact that the ruler had acceded to Pakistan.

Lord Mountbatten on 25th July 1947 told "You cannot run away from the Dominion Government which is your neighbour any more than you can run away from the subjects for whose welfare you are responsible". Thus again it was incumbent upon the Princes to consider geographical contiguity and population.

India proposed to Prime Minister of Pakistan that they both should act on this accepted principle. Mr. Beg quoted White Paper of

government of India November 8 1947 in support of his argument. Mr. Beg then referred to the assurance given by Panditji that where there was a difference on accession between a ruler and his subjects the people would decide.

In support of his argument Mr. Beg referred to Maharaja Jodhpur's case as well. He had met Mr. Jinnah and had decided to accede to Pakistan. Mr. Menon informed Mountbatton that population and the prince were both Hindus and the State had geographical contiguity with India. Maharaja was called and told by Mountbatton to consider seriously the consequences more so when he was a Hindu and the population was Hindu and he was told that it would entail various complications and would be in conflict with the principles underlying independence Act of 1947.

Court: "Is there any dispute on this between the Prosecution and You."

Mr. Beg: "Plebiscite was the agreed solution."

Court: "Have Prosecution denied that."

Mr. Beg: "They have not only denied it but prosecuted us for it."

Court: "According to Mr. Pathak a certain democratic process was adopted and plebiscite was adopted in that process."

Mr. Beg: "That was not so. Mr. Pathak has made various observations on various issues. He says that plebiscite means ascertaining wishes of people and Constituent Assembly has done it. Government of India and parties from the very beginning followed that plebiscite was different process to that of the Constituent Assembly."

Court: "According to you Constituent Assembly was not competent to decide accession."

Mr. Beg: "We have a fundamental difference with prosecution. Constituent Assembly was not competent to decide accession."

Sheikh Sahib: "So far as I remember Mr. Pathak made two observations- Pakistan demands plebiscite and Sheikh Abdullah presse that plebiscite was a sin quo non of entire relations with India. Mr. Pathak said that plebiscite was only a wish of one individual i.e. Panditji and Constituent Assembly fulfilled that wish. Beg Sahib argues that it was not one man's wish but it was the main principle which was agreed upon by the people of Kashmir and Government of India. It was not a mere political wish which could be fulfilled by Constituent Assembly and other such like bodies. Pakistan may at this time press for plebiscite but it should be remembered that this was the basis of our relations with government of India. Beg Sahib wants to clarify the position."

Court: "I want to see where Mr. Pathak argued like that. Apart from that if there is common ground why should this discussion be carried on."

Mr. Beg: "Prosecution is wrong. At places it has contradicted that plebiscite was necessary and at places it takes the stand that Constituent Assembly was as an alternative for plebiscite. There is no common ground between us and them."

Court to Prosecution Council: "Have you conceded that Plebiscite was not point at issue."

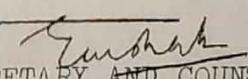
Mr. Pandey: "I am not fully aware of the fact of this case. I would request you to kindly refer to Mr. Pathak's arguments. My friends raise the ghost and kill him also."

Sheikh Sahib: "We have taken notes and those are with us."
Mr. Shah: "The learned friend said that we are raising the ghosts and killing them but actually the ghost has already been raised by Mr. Pathak."

(The court rose for the day.)

Issued by
J&K LEGAL DEFENCE COMMITTEE

Copy forwarded to the
for perusal and publication.


SECRETARY AND COUNSEL,
J&K LEGAL DEFENCE COMMITTEE, JAMMU.

ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
 SHAHEEDGUNJ- SRINAGAR
 K A S H M I R.

Telephone: 707.
 Srinagar. 5133.
 Jammu.
 New Delhi. 32202.

5th June, 1961.

Branches:
 1. The Dawn, Canal Road,
 Jammu.
 2. 81/48, Diplomatic,
 Enclave,
 New Delhi-21.

THE KASHMIR CONSPIRACY CASE
Resume of Mirza M.A. Beg's argument

Resuming his arguments today Mirza Muhammed Afzal Beg told the court that he was dealing last time with the question of considerations of accession laid down for the Indian Princes. He stated that the Prosecution has kept a purposeful vagueness while arguing on this point. In Security Council debates this vagueness was removed when the Indian Delegates were asked whether they were committed to the Resolution of Jan 8 and August 49. If the Prosecution tells today that India's commitment to plebiscite was not distinguishable from other methods then there was no difference of opinion, but prosecution had stated that plebiscite was taking a direct vote and that was done by the Constituent Assembly. Mr. Beg argued that it could not mean that people exercised their vote. Argument of the Prosecution was incorrect and the facts produced by them were not correct. Prosecution contends that the members were elected by the people and their decision was the decision of the people. Mr. Beg termed this as indirect vote. It was not the direct wish of the people even though it might be presumed that Constituent Assembly elections were held properly. Political Science, Constitution and History has never accepted plebiscite to mean any other thing but direct vote of the people. In all matters of vital importance more so when decision was taken till eternity no other meaning could be attached to plebiscite. It was not an election of President which could be rectified by fresh elections or impeachment. It could not vary according to convenience of the Prosecution. Thus argued Mr. Beg.

The argument of the Prosecution that nothing went counter to the wishes of the Prime Minister. The decision of the Constituent Assembly was fallacious. Prosecution wanted to hunt with hound and run with bear, remarked Mr. Beg, and further stated that fortunately the blessing was that they had been brought to the judiciary and now was the time to expose these manifestations of the Prosecution.

Arguing further Mr. Beg stated that considerations--of the accession for Princes were laid down by the British Government itself and later by League and the Congress Agreement. He then referred the circumstances attending to Kashmir Accession in 1947. Mr. Beg referred to the paras 33 and 34 of his written statement wherein he had fully elucidated how Kashmir was in the grip of chaos and confusion in 1947. The conditions were perilous. The State was in trouble and turmoil. Maharaja sought military aid from India in a state of peril and panic and Mountbatton demanded that Maharaja should accede to India first and then aid could be given.

In support of his argument he quoted from Mr. V.P. Menon's book, "Integration of Indian States" who as Secretary of States Ministry shuttled to and fro between Delhi and Srinagar at that time. Defence Committee presided over by Lord. Mountbatton was held and Menon was sent to Srinagar. He saw that Srinagar had become like a graveyard. On arrival he reported that the supreme need and necessity was to send cool troops

but Lord Mountbatton did not agree because Kashmir was still Independent. It was suggested to Maharaja that an application for accession be sent and the condition was that when the raiders were thrown out, the wishes of the people majority being Muslims, should be ascertained by a plebiscite. Menon went back to Maharaja and found him ready to accept this condition and the provisional accession was made. Maharaja had told his A.D.C. that if Mr. Menon did not return he should be shot while asleep. Mr. Beg stated that that was the point at which Maharaja signed the accession - a suicidal state of mind. - Mr. Beg further stated that it was for the courts to consider whether this type of accession could be accepted to have been made by a free mind. He asserted that the plebiscite was conditional and this had the fullest support of Sheikh Muhammed Abdullah. Mr. Beg asked that when the accession was conditional and provisional whyb they were prosecuted for treason. The accession of that time was a movement of touch and go and the real object was to save the State from the raiders and not to complete the accession of the State. That was not a calm and calculated act of accession because Government of India denies help, accepts the application for accession; because Maharaja was just to commit suicide; Sheikh Sahib at this time jumps in and agrees to accede with to India with the condition that accession would be subject to plebiscite. Mr. Beg then referred to Maharaja's letter of 26th Oct 1947 reproduced by the White Paper 1948 of the Government of India:

"As Your Excellency is aware that the State of Jammu and Kashmir has not acceded to either the Dominion of India or to Pakistan. Geographically my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides my State has a common boundry with the Soviet Republic and China. In their external relations the Dominions of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, whether it is not in the best interests of both the Dominions and my State to stand independent of course with friendly and cordial relations with both."

Commenting on this Mr. Beg stated that this letter of the Maharaja of Kashmir at that time was a pathetic document and related the conditions. Mr. Beg said that the question was to see how Maharaja was in a vacillatory state of mind. He gave direct indication that he was thinking of remaining Independent in view of the geographical compulsion. Mr. Beg asked could

people be nailed down to this kind of decision. This could only be done by the use of arms and force and nothing else. Maharaja wanted to save his people from the raid and he could not do that without asking help from India otherwise he was thinking to remain Independent. Maharaja was forced by circumstances to accede and no jurist could call it a free exercise of mind. He great as he was made no secret of the fact of remaining Independent. The accession was conditional and the condition was a plebiscite.

Commenting further on it Mr. Beg said that Maharaja writes to Lord Mountbatton that he wanted to set up an interim Government and Sheikh Abdullah was to take the responsibility. Sheikh Sahib was the principal figure in saving the State from annihilation. Mahajan, Siddique and Ahmed Yar could not do that. That was necessary for consideration because Indian Army could not function in a hostile population. In order to ensure civil cooperation Sheikh Sahib's support was sought. Erstwhile leaders of the people like Maulana Saeed and others stood firm behind Sheikh Sahib and Maulana acted as liaison.

Mr. Beg then referred to Lord Mountbatton's reply and

and states that Lord Mountbatten also holds this as a special circumstance and says that State's accession would be settled by a direct reference to the people when the peace and normalcy were restored. Here Mr. Beg derived three conclusions which were apparent after he read these letters:

- (1) Government of India accepts that accession of Kashmir was subject to dispute. Immediately after the accession was made, Pakistan was brought as a party in accession.
- (2) Condition of reference was to the people and not to the Constituent Assembly. Reference to the people meant direct reference to the people alone i.e. plebiscite.
- (3) Indian forces were sent to help the Maharaja's forces to defend his territory. If accession had been taken as final act Governor General would not have said that the Indian forces were sent to defend some other's territory. Had this act of accession been taken truly as a final act the defence would have become a Central responsibility and Kashmir Army would have become a non-entity asserted Mr. Beg. He argued that this was the most important evidence to show how the parties acted and how the accession was conditional and disputed also.

Mr. Beg told the court that there was overwhelming evidence from "The Mahatma" Vol. VIII which corroborates his stand.

Court: Are you mixing up accession and integration. Instrument of the accession could be the basis only.

Mr. Beg: I have on the authority of Mr. Mubarak Shah/Deputy Minister for Finance that Instrument of Accession is provided with the provisions of the plebiscite. Moreover the purport of of action could be got from the letters of His Highness and Mountbatten passed between them. Mountbatten's reply conveys back the conditional acceptance of the accession and these were part and parcel of the so-called accession. The act of accession was the request to accede and its acceptance. The whole was accession and not Instrument of Accession alone, remarked Mr. Beg.

Referring again to "The Mahatma" he stated that this book also includes that plebiscite alone was the condition. The importance of that was that that was conduct, motive, admission and the promise of the parties concerned and this refutes the contention of the prosecution. The intention of the parties on Oct. 1947 was important and Government of India ruled out Constituent Assembly as a means to settle the accession and now could Prosecution take cover under that decision, asked

Mr. Beg. The client himself did not agree with the prosecution. Government of India announcements, notifications, pledges, speeches, promises and communiques were ample on this subject. These were very important pieces of evidence under Sec. 8, 14, 22 and 115. Intentions, motive, conduct and the admissions of Government of India could be proved from those documents. The purpose of all these was that when normalcy was restored plebiscite would be held in Kashmir.

Court: Sec. 21 refers to the suit.

Mr. Beg: I am referring to the principles of sec 21. It says that admissions are relevant and may be proved against the person who makes them.

Arguing Sec. 115 of the Evidence Act Mr. Beg stated, "Section 115 of the Evidence Act was estoppel section. Government of India by declaration had made it clear that

Government of India meant to have plebiscite in Kashmir. Government of India created honest conviction about it in the minds of Sheikh Sahib, his colleagues and the people. Never was it thought that it was a diplomatic trick. People were honestly convinced that Government of India meant Plebiscite alone." Mr. Beg remarked that it was on these grounds alone that they should be judged if they had committed high treason.

(Break)

-4-
AFTER THE BREAK.

Resuming his arguments Mr. Beg further elucidated "the conduct of the parties" regarding holding of the plebiscite in Kashmir and referred to the letters of Prime Minister of India 25 Oct 47, to Prime Minister of England wherein Prime Minister of India stated that question of aiding Kashmir was not to influence Kashmir to accede to India. Prime Minister of India assured the Prime Minister of United Kingdom that views of the people would be ascertained in this disputed matter. The United Kingdom Prime Minister's importance was that he represented the country that transferred power and passed Indian Independence Act. Prime Minister of India repeats the same on 26th October to Prime Minister of Pakistan as well. Thus Pakistan became a party on the basis how to take decision was completed. He also referred to the telegrams dated Oct 28, 47 from Prime Minister of India to the Prime Minister of Pakistan, and letter dated Oct 31, 1947 by Prime Minister of India to Prime Minister of Pakistan again which gave the pledge to Pakistan that plebiscite will be held. Mr. Beg remarks here that it was India which gave the pledge and not/accused.

Referring to the broadcast record of Prime Minister of India 2nd November, 1947, Mr. Beg asserted that three points were clear from this:

1. Accession was disputed. 2. Pakistan was a party. 3. Provision of Plebiscite was laid and thus this provision reduced nature of being a final act.

Commenting on this Mr. Beg said that it was pledge of Government of India and Maharaja had supported it. Both promiser and the promisee had accepted a conditional promise and thus the accession became provisional. It states that 'we will not and cannot back out of it and if justice could be done Mr. Beg remarked that they should have been acquitted on these words alone.

The Word 'objective' used in this White Paper was important, remarked Mr. Beg. It was not a technical word. It was assured that "will of the people" would be ascertained. The word Plebiscite was used throughout in pledges, agreements, statements, announcements, platform and in United Nation. This was guaranteed to all people, irrespective of caste, creed and colour. If it were the question for the Constituent Assembly to decide then the assurance given to every citizen would not have been there because every citizen of whatever political affiliation was guaranteed the right to vote. Thus argued Mr. Beg.

Further Mr. Beg said that on November, 3, 1947, Prime Minister of India sends a telegram to Prime Minister of Pakistan and assures him that India had no desires to force her decision on Kashmir but wanted that people should decide the issues. Thus Pakistan was considered a party and India repeatedly assured that this was pledge given to Pakistan and the people of Kashmir.

Arguing further Mr. Beg said that Prime Minister of India on November 26, 1947, addressed Constituent Assembly and then said that, 'this position was discussed by the Government of India with Sheikh Sahib and the Maharaja and it was made clear to both of them that finally the people will decide this and Sheikh Sahib was also of that very opinion. Sheikh Abdullah was asked to form the Government for this transitional period. India had gone to Kashmir to protect Kashmiris and when law and order was restored the people should decide. will of the people and not naked force would solve this problem.' Hence holding of plebiscite alone was agreed.

Quoting the telegram of November 8, 1947 from the Prime Minister of Pakistan Mr. Beg said that here Prime Minister of Pakistan was informed of the grounds on which Indian troops were sent and also the basis of solution was made known to him. It was bilateral action. Pakistan was told to withdraw raiders and India will withdraw her troops and then Pakistan and India will ask the United Nation jointly for having a plebiscite in Kashmir. Here the League and Congress agreement was mentioned that when people and princes profess different faith the reference should be made to the people.

-2-

Mr. Beg then read from "Mission with Mountbatten" by Cambbeell Jhonson where he states that Joint Defence Council meeting of Pak and India was held. This was attended by Mountbatten, Ismay, Liaquat and others and in this also agreed that Kashmir question should be solved by holding Plebiscite.

Here impartial plebiscite was agreed by the both parties. Pak wanted to remove Sheikh Sahib and India did not agree to that but impartial plebiscite was agreed. Mountbatton suggested that this should be done by United Nation. Prime Minister of Pakistan agreed to it and this was how United Nation came in, remarked Mr. Beg.

Summing up Beg said that (1) the accession was disputed. (2) It was conditional. (3) Accession would be finalised by a plebiscite. (4) This was a solemn pledge. This was a legal contract fortified by morality and International sanction and (5) The parties gradually ask United Nation to hold the plebiscite.

On 31st December 1947 India approached the Security Council by way of a complaint given by White Paper of India. Referring to para 6 Mr. Beg stated that Government of India refers to the crises in Kashmir and to sending the troops. India here accepts that acceptance of accession was hasty and troops were sent in haste due to emergency. It assured the Security Council that Government of India was adamant to determine the wish of the people by the recognised method of a plebiscite. The issue was clenched once for all and thus of the contention Prosecution thereby falls to the ground.

People of Kashmir through Sheikh Sahib and India had entered into an agreement wherein it was stipulated that Sheikh Abdullah would bring normalcy in the State, restore law and order, bring confidence back and then India will hold plebiscite remarked Mr. Beg. Government of India wanted United Nation to hold the plebiscite in Kashmir. The pledges given by Sheikh Abdullah were executed in an exemplary way. India undertook to withdraw raiders. India could create a fire of world opinion on Suez, could she not do so for withdrawal of Pak troops asked Mr. Beg. It was obvious that India did not want to do so because the result would be plebiscite affirmed Mr. Beg. India was willing to keep the area beyond Cease-fire with Pakistan and subject people of this side to innumerable trials and tribulations

Mr. Beg requested the court to consider that these pledges and assurances went deep into the minds of people of Kashmir and they rose to the occasion and maintained peace and calm unparralled in the annals of Sub-Continent.

Quoting from "Struggle for Kashmir" by Micheal Brechem and "Two nation theory and Kashmir" by Lord Birdwood Mr. Beg stated that Mr. Iyenger told the Security Council on 15th January, 1948, that Maharaja was informed that plebiscite will definitely be held in Kashmir and if necessary under United Nation auspices. "Mr. Beg remarked that for plebiscite no condition was placed. In the same speech argued Mr. Beg that Mr. Iyenger assured the United Nation that it was for Kashmir to accede to India or to Pakistan or to remain Independent. The issue was left to the people remarked Mr. Beg.

Ellucidating further Mr. Beg stated that India submitted certain proposals United Nation and suggested that (1) Existing emergency Administration should be transferred into responsible Govt. under Sheikh Abdullah. (2) National Assembly should be convened on adult suffrage. (3) National Government to be formed. (4) National Government will arrange for holding plebiscite under United Nation advice and observation.

It proves that the National Assembly had only to arrange a responsible form of Government and nothing do with the holding of Plebiscite. This idea of forming National Assembly matured into Constituent Assembly and whatever the form, it was obvious that this assembly had nothing to do with holding of the Plebiscite. This was left to the United Nation. Thus argued Mr. Beg.

Referring to the Prime Minister of India's statement in Constituent Assembly on 5 March 48 given in Jawahar Lall Nehru's

speeches issued by Information Department of India . Mr. Beg stated that here it was obvious that hasty action was taken and the proposal made to United Nation of 27 January had a reference in this statement. In this statement Prime Minister referred to proclamation of Maharaja according to which Sheikh Sahib became Prime Minister of Kashmir from March 1948. The Council of Ministers was authorised to form a National Assembly on the basis of adult suffrage . The National Assembly was to hold a Plebiscite on the advice and supervision of United Nation. That was the crux of the case said Mr. Beg. From the very beginning it was ruled out that this National Assembly would have to do anything in holding Plebiscite. Its sole aim was to bring responsible Government into being on adult franchise and then arrange for the plebiscite under direct control and the supervision of United Nation. Here Mr. Beg stated that their sanction was this record of government of India and United Nation and not the evidence of Mustafa Mirchal.

Ellucidating further Mr. Beg said that UNCIP was formed in April 1948 by Security Council and most historical Resolution was passed stating that Security Council will assist Govt. of India and Pak to : (1) Have Cease-fire. (2) Effect Truce Between India and Pakistan and (3) To determine conditions for holding free plebiscite in Kashmir. This was followed by Resolution of Aug 48 and 1949 stating : (1) Accession to India and Pakistan will be settled by United Nation through a plebiscite. Mr. Beg stated that the words were taken from Indian Complaint to Security Council and were thus more Indian than Pakistani; and (2) All citizens who have left Kashmir will be repatriated and plebiscite will be held in a free and fair atmosphere.

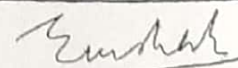
Mr. Beg remarked that for saying to implement these pledges they were prosecuted. He affirmed that India by her moral stature could implement it but unfortunately she was satisfied that Pakistan should have Gilgit and the present area and the rest should belong to India and was contented with the fact that freedom fighters of Kashmir should continue to be persecuted. Mr. Beg remarked that people were being crushed here and people across the to Cease-fire line were not allowed to come to their own homes.

Referring to the communique of UNCIP 7th January 1949, contained in Kashmir Papers published by Ministry of External affairs, Mr. Beg stated the Government of India and Pakistan had accepted to have Plebiscite in Kashmir. Mr. Beg argued that India was morally, legally and Internationally bound to guarantee political freedom here but contrary to that Preventive Detention Act and other monstrous laws were in operation in here. Relations, dear and near ones were not allowed to come to their homes. Sikhs and Hindus were not allowed to go to their homes because India was not honouring her pledges. As instances he referred to the cases of (1) Dr. Muzaffar Shah brother of Khawaja Mubarak Shah, (2) Sons of Mistri Mohd. Nazir and others.

(The Court rose for the day)

Issued by
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Copy forwarded to the
for perusal and publication.


G.M. SHAH,
SECRETARY AND COUNSEL,
ALL J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE

SHAHEEDGUNJ- SRINAGAR.
K A S H M I R.Telephones:
Srinagar. 707.

Jammu. 5133.

New Delhi. 32202.

6th June, 1961

Branches:

1. The Dawn, Canal Road, Jammu.
2. 81/48 Diplomatic Enclave, New Delhi-21.

The Kashmir Conspiracy Case
Resume of Mirza M.A. Beg's argument.

Resuming his arguments today Mirza Mohammed Afzal Beg stated that yesterday he referred to Resolutions of Security Council of August 48 and January 49. These Resolutions reiterate the decisions of India and Pakistan to settle the dispute by a plebiscite. Communique of the UNCIP also shows that these Resolutions were accepted. That made it a legal agreement in every respect of the term. That sanctioned bilaterally the earliest holding of plebiscite. Thus accession legally, constitutionally and internationally became subject to holding of plebiscite and until then accession was a provisional affair. Mr. Beg stated that from the defence point of view it was of that character from its very inception i.e. October 1947. Documents left no doubt about the fact that plebiscite alone was meant and no other method. At this stage Mr. Beg referred to the Prime Minister of India's statement made in the Lok Sabha dated 28-11-50 wherein he had stated that, "As for the settlement of Kashmir Dispute we were concerned we have resiled for none of the commitments made to the people of Kashmir and the United Nations." and said that it made it clear that Government of India was committed to have a plebiscite in Kashmir.

Mr. Beg then referred to the Foreign Affairs debate in the Lok Sabha where Prime Minister of India on March 28, 1951, told the House, "..... that from the beginning it was the policy of Government of India that the people of Kashmir should decide the future. Because of this policy we accepted the idea of plebiscite."

Mr. Beg also quoted AICC Resolution of May 5, 51 wherein under the caption of Foreign Policy, it is said, "..... In regard to Kashmir the policy of Government of India was in consonance with Sheikh Abdullah's stand with which Congress is also in full agreement. People of Kashmir alone will decide their future themselves."

Commenting on this Mr. Beg said that Congress endorsed the decision of the Government of India to have a plebiscite in Kashmir and welcomed the formation of the Constituent Assembly so that State's progress could be achieved in other walks of life. Accession was left to plebiscite and it shows that accession had nothing to do with the Constituent Assembly. Constituent Assembly was convoked only to achieve economic progress in Kashmir, argued Mr. Beg.

Mr. Beg then referred to Prime Minister of India's speech of Feb 12, 1952 to the Parliament where he had said, (1) That plebiscite would be held in the whole of Kashmir; (2) No power would be allowed to decide this issue by war or coercion and (3) That it was personal wish of the Prime Minister himself to have plebiscite in Kashmir.

Commenting on this Mr. Beg said that throughout the word "people" had been used vis-a-vis plebiscite and not "Constituent Assembly". In the same speech Prime Minister of India said that his personal desire was to have plebiscite in Kashmir. A plebiscite should be held as early as possible so that an end was put to this conflict.

2 Constituent

Thus it was clear that the Constituent Assembly had only to make arrangements for holding of plebiscite in the State, affirmed Mr. Beg.

Making a brief reference to Delhi agreement Mr. Beg stated that it was an attempt to define relations between India and Kashmir. It came into existence in July 1952. This arrangement was a provisional one and had nothing to do with the finalisation of accession. It was just to finalise and continue constitutional arrangements existing between India and Kashmir. Certain questions had to be adjusted into some sort of legal form. Hereditary rule had to be terminated. These and some other similar issues were given a constitutional shape and by no means was it meant to finalise the accession. Mr. Beg stated that this could be borne out by Press Conference held on July, 24, 52 in which Prime Minister assured that "in spite of the Delhi agreement Plebiscite pledge stands."

Commenting on this Mr. Beg stated that it was the Prime Minister of India who assured that Delhi Agreement had nothing to do with the question of plebiscite. United Nation had to deal with this basic question. The argument of the Prosecution was only to confuse the World opinion but those who know the issue fully could not be misled, asserted Mr. Beg. The Prosecution argument that Constituent Assembly decided the issue naturally leads to the conclusion that India was deceiving the United Nation, remarked Mr. Beg. Mr. Beg asserted that that could not be "intention" of Government of India and according to them it could never be a double talk.

Mr. Beg then referred to the speech of Prime Minister of India dated August 7, 1952 in Lok Sabha where he told the house, "that the future of Kashmir is going to be decided by the goodwill and pleasure of her people. The future of the State can ultimately be decided only by the people of Jammu and Kashmir."

"That is the policy that India will pursue. Our bonds with Kashmir are not there that are retained by our Army or even by our Constitution-but by love, affection and understanding."

Commenting on this Mr. Beg said that Prime Minister laid down this policy that people would decide the accession according to their pleasure and goodwill. He laid emphasis on the question of people determining their future. He was prepared to suffer the pain of separation if Kashmir decided otherwise in plebiscite. Mr. Beg stated that it was his deeply rooted conviction that as long as people were denied this right they would not remain happy. Prime Minister wanted to win over the people by love and Mr. Beg remarked that they were accepting to see better manifestations of that love more so from 1953, and that would have been the proper expression of sentiment of Prime Minister.

Prime Minister leaves no doubt on the mind of anybody about holding Plebiscite. Mr. Beg stated how could they believe that a time would come when they would be told that it was not practicable.

Quoting from the speech of 7th August, 1952.

"I want to stress that it is only the people of Kashmir who can decide the future of Kashmir. It is our conviction and one that is borne out by the policy we have pursued."

Commenting on this Mr. Beg stated that Prime Minister tells that pledge was given to Kashmir and to United Nation and wishes of the people for accession to India or Pakistan would be ascertained. Government of India had the earnest desire to fulfil the pledges given. It was made clear that the people alone would decide the question of accession themselves. Mr. Beg stated that this was after the Delhi Agreement was made that India reiterated the pledge of Plebiscite.

Referring to a press Conference in Cairo on 25th June 1953 Mr. Beg stated that it was the time when National Conference under directions of Government of India was finding alternatives for the settlement of Kashmir dispute subject to the ratification by the people that Pandit Ji gave this statement wherein he told that India had given this pledge from the beginning and would stand by it. Mr. Beg commented that no one in Kashmir or in India took accession of 1947 as a final settlement.

Quoting from the same press conference :

" I think that a direct approach by the parties concerned i.e India ,Pakistan and Kashmir is the best way of solving it rather than letting others to come in."

Commenting on this Mr. Beg stated that India made Pakistan a party and accepted that at International level and why should they be blamed that they did not dub Pakistan as aggressor when India sits in round table conferences with Pakistan for exploring ways for the settlement of Kashmir Dispute. Mr. Beg said that for one month National Conference tried to explore all possible ways of settlement. Unanimous decisions were that unless the dispute was settled Internationally, internal stability could not be achieved. Honest opinion by National Conference was given. Internally what was happening came to lime light after 53 though there were indications from the press but Sheikh Sahib had ample faith in Panditji and therefore they never believed that there was a conspiracy being hatched behind the scenes against them. This , conspiracy Mr. Beg remarked was to finalise accession by back door means but Sheikh Sahib resisted that, asserted Mr. Beg.

After 8 men Committee decisions were communicated to the Prime Minister of India, he met P-rime Minister Mohammed Ali of Pakistan. Meantime on August 9, 1953, Sheikh Sahib had been arrested and a reign of terror was let loose in Kashmir. Both Prime Ministers met in Delhi to settle this dispute of Kashmir accession. On 21st Aug 1953, when they were all in the prison the Prime Ministers issued a statement when according to the prosecution the accused were in conspiracy remarked Mr. Beg. Mr. Beg remarked that this story of Prosecution was untenable and inconceivable. Mr. Beg arguing further said that here also Prime Ministers agreed that Plebiscite was the best solution and most feasible method. Mr. Beg remarked that it could well be presumed that Prime Minister of India had the proposal of 8 men Committee in mind when he again agreed with the Prime Minister of Pakistan in this joint meeting that plebiscite should be held in Kashmir. Later on between them passed letters wherein same was repeated. Mr. Beg stated that from 1953 upto this day they were in prison. Pledges and promises were given by India, to Kashmir, Pakistan, United Nations and the World and these were that people will decide their fate by an impartial plebiscite. Mr. Beg stated that as a member of Sheikh Sahib's Cabinet he had the full knowledge of what was happening with Government of India and what were the intentions of Government of India that he founded Plebiscite Front in 1955 because Govt; of India had the largest amount of agreement with holding plebiscite in Kashmir. He therefore, as the President of Plebiscite Front gave shape to that pledge. That was the influencing factor to him and not a piece of paper produced by Mustafa Mirchal which never reached him. The inspiration was from India. This came from the highest in India and this alone was his guiding factor and not the cock and bull story of the prosecution.

Referring to his replies to Question No. 30 Mr. Beg stated that therein he had given the details and genesis which were behind the Plebiscite Front idea and had explained wherefrom he got the inspiration and what was his source for forming Plebiscite Front Organisation. The Prosecution charge that he had set up this organisation at the instance of Pakistan was false remarked Mr. Beg. He affirmed that it was India alone from whom he got this inspiration and asked why should he have asked support from country which never gave support to this demand and which was even today indefinite about it. Here Mr. Beg remarked that even in 1957 Mr. Menon said in Security Council that India continued to be bound by two Resolutions of Security Council. Mr. Beg requested the court to make a contrast and see itself where the truth was.

continued on page 4.

Mr. Beg stated that during a period of these 8 years from 1947 onwards not once he came across one pronouncement of Pakistan which supported the stand of plebiscite and asked could then it be believed as prosecution charges that plebiscite was Pakistan sponsored. It was basically wrong and actually fantastic in nature.

In this whole plebiscite affair Mr. Beg affirmed that the gentleman who offered accession to India supported plebiscite in Instrument of accession and reiterated that it was only from India alone that he had the support and inspiration for having plebiscite in Kashmir.

Quoting from Broucher Information Department of India a speech made by Mr. Menon in Security Council on January 23, and 24, 1957 Mr. Beg said that Mr. Menon questioned the ambiguity of Mr. Menon about Government of India's commitments. Mr. Menon there also affirmed that Government of India was bound to honour its commitments.

Referring to the meeting of Prime Minister of India President of Pakistan in 1960 Mr. Beg said that they agreed to find some other settlement for Kashmir. Mr. Beg requested the court to note that (1) 1960 was outside the period of this conspiracy and (2) that Kashmir question was still unsettled and thus everything i.e. Instrument of Accession, Delhi Agreement etc. were temporary and provisional. Mr. Beg asked why they were accused of conspiracy was a dilemma.

Commenting on the joint communique of Prime Ministers of India and Pakistan in August 1953, Mr. Beg stated that it was supported by Gakhshi Ghulam Mohammed as Prime Minister of Kashmir after the coup and thus he also was pledged to plebiscite. Mr. Beg then read the relevant portions of his statement. It was also supported by Mr. Sadiq. These 2 gentlemen thus were committed to plebiscite after their arrest in August, 1953, asserted Mr. Beg and said that prosecution story falls to the ground even on this point alone. Here he also referred to the statement of Prime Minister of India who told the Parliament that Kashmir question could not be decided unilaterally and said that it was evident and obvious that Plebiscite was only agreed solution of Kashmir Dispute.

Referring to Security Council Resolution of 24 January, 57 Mr. Beg said that after Mr. Menon had given that assurance Security Council passed this resolution and reminded the Governments concerned of the principles embodied in its resolutions passed from time to time for holding plebiscite in Kashmir under the United Nation auspices. This resolution declares that all actions taken by the Constituent Assembly of Kashmir would be in contravention of Security Council resolutions and reaffirms that disposal of the State will be by plebiscite. There was only one abstention of USSR when the vote was taken. Thus whole World was behind the Plebiscite argued Mr. Beg.

Summing up Mr. Beg stated that Plebiscite was a pledge given by India to Kashmir, Pakistan and World and therefore, every document, statement, communique of India whether in Parliament or Security Council repeated this pledge. (1) ...

Mr. Beg derived following conclusions:-

(1) It was the deep rooted conviction of the people and therefore they insist on this. (2) It was the only alternative to a settlement by violence. (3) It was one method on which there was largest agreement by all parties. (4) It had the sanctity attached to it of Parliament of India. (5) It had been approved as correct method by Indian National Congress the parent political organisation of India.

Mr. Beg said it was unfortunate if India did not find it plausible today to stand by what it stood in 1947. Mr. Beg asserted that it was the only peaceful method by which two neighbours could live in peace and by which the Jammu and Kashmir would flourish politically, economically and socially. Mr. Beg stated that they would put always their honest efforts to bring peace in Sub-Continent. He asserted that there was no criminal design and no malafides in this demand. They wanted to bring out people of Kashmir from abyses in which cold war had thrown them.

Continuing his arguments Mr. Beg stated that they were seduced to plebiscite and that could be possible when conditions were normal and peaceful. That was agreed upon by India and Pakistan. They as believers in Plebiscite could not resort to violence as alleged by the Prosecution as that would go contrary to the faith they profess. They were certain that violence would harm them and help the adversaries. In the very nature of things it was wrong to attribute violence and lawlessness to them. It was inconceivable because that would defeat the object of plebiscite. He asserted that they would fight any power that would have recourse to violence. He argued that such nasty allegations were made only to silence the powerful voice of Plebiscite in the State. He remarked that they never had harboured any idea of violence, chaos and disturbance to achieve their birth right of self-determination.

He then discussed the topic of Constituent Assembly and said that the relevance was : That Constituent Assembly had expressed its opinion on the accession issue and had ruled out Plebiscite. It was legally, factually and logically wrong. Factually it was wrong because Constituent Assembly was never vested with this power of deciding the accession issue. From legal point of view such competence of Constituent Assembly was challenged because there was an agreement that the Constituent Assembly will not decide the issue of accession.

In the light of these circumstances it could be proved that Government of India left no doubt that Constituent Assembly could not decide accession and thus it was outside the powers of the Constituent Assembly to even express itself in it. India was bound by plebiscite alone.

Mr. Beg then referred to the proclamation of March 1947 issued by the Maharaja wherein he desired to (1) replace the emergency administration by responsible government ; (2) Convoke National Assembly based on adult franchise for framing a new constitution. The idea was to have some sort of democratic set up. It was on the basis of adult franchise that this Assembly was convened. Mr. Beg stated that on 27th January 1948 Mr. Ayengar submitted a proposal to Security Council for having a National Assembly which would form National Government and that would arrange for holding of the plebiscite in Kashmir under United Nation auspices. Mr. Beg said Pakistan was insisting to remove Sheikh Abdullah. India resisted that because Sheikh Sahib was a popular leader. However in the lobbies of Security Council a compromise was made and Pakistan was told that if a representative Government was elected she may have pro-Pakistanis in the Assembly. This was agreed upon both the parties.

Mr. Pandey: Are these talks on the record of this case.

Mr. Beg: Yes, on the record of the United Nation documents.

Mr. Beg stated that in this background this proclamation could be considered. He stated that His Highness appointed a Government, went on holiday and then transferred power to Yuvaraj Karan Singh by a proclamation of 20th June, 1949. He divested himself of all the powers under section 3 and 4 of the Court. On 1st March 1951 Yuvaraj issues a proclamation because he retains the powers of His Highness whereby Constituent Assembly was convened for the purpose of framing the constitution. This was also the object of the proclamation of 5th May issued by His Highness himself. It was based on adult franchise. In fact both were the same and for the purpose of Constitution framing. It was named Constituent Assembly instead of National Assembly. The purpose and object was same. In fact National Assembly was the term used by them in New Kashmir" stated Mr. Beg. Both the assemblies intended to frame the constitution of the State.

Mr. Beg explaining the meaning of constitution said that the Constitution of a State was that paramount instrument which was called the basic law, and which defines the powers of the organisation of a State- Legislature, Executive and Judiciary. It explains whether a State is a democratic State or otherwise. The constitution shows as to where the sovereignty vests. Apart from it it deals about the fundamental rights citizenship rights. Both these proclamations were identical and postulated that the purpose of Constituent Assembly was to form the Constitution.

No jurist would give the definition of Constituent Assembly that it could deal with accession issue and other such topics asserted Mr. Beg. Accession had no place in its bonafides functions. In the Constituent Assembly of India the question of accession was given no place because that would have been foreign to its bonafides. So presumption was that both Maharaja and the Youvaraj used the term of constitution in these very terms in which it was understood all over the World.

Prosecution makes much of the Constituent Assembly by holding that it abolished Hereditary Rule and big Landed Estates. Mr. Beg said that abolition of Big Landed Estates was done by the Youvaraj by promulgating 'Abolition of Big Landed Estates Act.' It was not done by the Constituent Assembly as was wrongly understood and believed and even obliquely argued by the Prosecution. Supreme Court also held the same way and Mr. Beg quoted the relevant judgment about it. By virtue of section 4 Youvaraj Karan Singh had the powers to promulgate this Act. He left it to Constituent Assembly under Sec. 26 only to settle the terms of compensation. He referred this issue alone to the Constituent Assembly. That was why Constituent Assembly decided on this point otherwise it was not competent to do even that.

Commenting on the abolition of the Hereditary Rule Mr. Beg stated that this was the proper function of a Constituent Assembly to determine whether the country should have a monarchical system, autocratic system or a democratic system of Government. One of the foremost clauses of every Constitution deals with the nature of the Head of the State. It was therefore that Constituent Assembly legitimately decided to abolish the Hereditary Rule and to have elected head of the State.

The third question was whether Constituent Assembly could decide accession. This could be done certainly if Youvaraj had referred to Constituent Assembly as he did in the case of the compensation. But Youvaraj did not do so because it was not the function of Constituent Assembly and Government of India was committed to settle accession by plebiscite under United Nations auspices. Mr. Beg stated that if Constituent Assembly pronounced on this question it went beyond its limits and its opinion had no value whatever. In the Words of Krishna Menon it was a sub-sovereign body and there was nothing like sub-sovereign body asserted Mr. Beg..

Mr. Beg then referred to the fact that when members from Kashmir were sent to Constituent Assembly of India, Pak took an exception to it. Security Council asked Government of India to clarify the position. Secretary General of Government of India on Nov 21, 1949 wrote a letter to UNCIP assuring this body that such participation did not alter the Government of India's intentions to determine the will of the people regarding the accession issue. Here Mr. Beg also referred to Prime Minister of India's address to the Parliament March 28, 1951 wherein Prime Minister stated that plebiscite would be held in Kashmir and assured that Constituent Assembly would not in any way detract the authority of United Nations so far plebiscite was concerned.

Mr. Beg quoted B.N. Rau's statement dated March 28, 30, 1951 in which an assurance was given to the Security Council that Constituent Assembly could not dispose the future of the State. Mr. Beg then quoted following references:

- (1) Rajeshwar Dayal assured on 29th May 51, the Security Council that Constituent Assembly would not prejudice the issue of accession before the Security Council.
- (2) Security Council Resolution of 30th March 51 passed that Consenbly cant dispose off any part of Kashmir and if Consenbly does that it would violate terms of reference to Security Council.
- (3) Prime Minister of India in 1951 stated that decision of Consenbly would not affect Govt; of India obligations given to the Security Council to hold plebiscite in Kashmir.
- (4) Prime Minister of India in March 51 stated that India would not come in the way of a decision by Security Council.
- (5) Prime Minister on

26th June 1952 clarified that the basic thing was that the people of Kashmir must decide their future.

Commenting on this Mr. Beg said that the question of accession was open and outside the jurisdiction of Constituent Assembly. The question was before Security Council and Government of India did bound itself to the decision of the Constituent Assembly of Kashmir. Mr. Beg further stated that on March 29, 1956 Pt. Ji said in the Lok Sabha that Constituent Assembly could frame its constitution and India was bound by her commitments made before the Security Council and that commitment was accession to be decided by a plebiscite. When the Constituent Assembly had taken the decision Pandit Ji rebuked at it and said that "unilateral decision cannot be taken."

Mr. Beg again referred to the resolutions of the Security Council 24th January, 1957 wherein it reminded Government of India that final decision of Kashmir will be made by determining the will of the people and refused to recognise any action that was taken by the Constituent Assembly of Kashmir regarding the disposition of the State or its part and considered such an act as violation of Security Council decision.

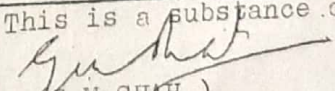
Summing up Mr. Beg stated that:

"(1) Constituent Assembly was a step in the process for making constitution on the basis of adult franchise. (2) Security Council was assured that such Assembly would bring into being a democratic Government (3) It would arrange for holding of plebiscite under United Nation auspices. (4) Constituent Assembly and National Assembly were synonymous names. (5) Constitution of a State does not envisage decision of accession as its legitimate action. (6) Youraj Karan Singh did not refer settlement of accession to Constituent Assembly (7) It could not place question of accession on its agenda as it could not put matters of foreign affairs and defence on its agenda (8) Security Council passed resolution that Kashmir question would be disposed by plebiscite and not by Constituent Assembly. (9) Government of India announcements pledges, promises and undertakings held Plebiscite to be the only solution of Kashmir accession. (10) Constituent Assembly made this announcement after 6 years of its inception when it had lost the confidence of the people. Commenting further Mr. Beg said that it had no locus standi and therefore no notice of its decision could be taken, by any court of law.

When this action was taken a leader of the stature of Sheikh Sahib was kept behind the bars because the other party knew that his presence in the Assembly would have changed to whole course of history. Prosecution accepted that in 1947 he changed the course of history in Kashmir. India convied at this unconstitutional Act of Constituent Assembly. Constituent Assembly was not competent to pronounce on accession. The decision was a nullity. Legally it was wrong. Morally it was estopped. Constitutionally it was fallacious. Historically it was incorrect and logically it was untenable. So argued Mr. Beg when the Court rose for the day).

Issued by
J&K LEGAL DEFENCE COMMITTEE
JAMMU.

Copy forwarded to the
FOR perusal and publication. This is a substance of
full argument.


(G.M. SHAH.)
SECRETARY AND COUNSEL,
ALL J & K LEGAL DEFENCE COMMITTEE,
JAMMU.

Telephone:
1. Srinagar. 707.

2. Jammu. 5133.

3. New Delhi. 32202.

Grams... INSAF

THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ- SRINAGAR
K A S H M I R.

Branches:
1. The Dawn, Canal Road,
Jammu.
2. 81/48 Diplomatic
Enclave,
New Delhi-21.

7th June, 1961.

THE KASHMIR CONSPIRACY CASE
Resume of Mirza M.A. Beg's arguments.

Resuming his arguments today Mr. M.A. Beg informed the court about the sickness of Sofi Sahab and Mirza Sahib and requested for their exemption from the court attendance.

Continuing his arguments Mr. Beg stated that Constituent Assembly could not pronounce on accession because it was not legally competent to do so. Its decision was characterized by India as a mere expression of opinion. Mr. Beg stated that Prosecution have tried to argue that vote of the Constituent Assembly was vote of the people. Mr. Beg repudiated this contention on the support of Government of India announcement itself. Constituent Assembly decision was not a vote of people because 12 lakhs were across the Cease Fire Line who had not been even consulted. This could not be the vote of the people. Absence of a few members did not mean that some votes were less. 25 members of Azad Kashmir had the right to sit and canvass others to their own view. They could change the course of history. They would have been powerful deputies of the House. This denial vitiated the whole process because Kashmir Constitution professes to be Constitution for the whole State. The decision was thus ab initio void, argued Mr. Beg.

2. Prosecution being in difficulty sought to make out that it was all the same whether direct or indirect vote was taken. Mr. Beg refuted the stand. In the plebiscite the vote was direct and every adult citizen was entitled to vote. The insistence on direct vote through plebiscite was consistently made by India from Oct. 47 and all other methods were excluded.

No indirect method was envisaged because; (1) In a direct vote the guarantee was maximum that it represents the people's will; (2) In an indirect vote the danger of bribing and cajoling members was there as that was done in Kashmir. The right of recall in Kashmir Constitution was not provided by which this defect could be corrected. Therefore direct vote was insisted always. The conclusion was that the vote of deputy could not and should not be considered to be the vote of the people.

3. India never claimed that accession issue was close because Constituent Assembly had pronounced on it. India was too much tied down by her commitments and she always upheld that Constituent Assembly decision could not in any way affect the plebiscite which was the agreed form of solving Kashmir accession issue.

Referring to the speech of the Prime Minister dated March 31, 1957 in Madras Mr. Beg stated that the Prime Minister in his speech said that Pakistan should withdraw her forces first and then other steps would be taken. Prime Minister asserted that India would never come in the way of plebiscite. Mr. Beg stated that very emphatic words were used by the Prime Minister as late as 1957 that India was bound to honour her commitments. Thus Prosecution contention was not correct at all. Having done with legal and factual aspect of accession of the Constituent Assembly, Mr. Beg referred to Sheikh Sahib's speech of 5 Nov, 51 delivered in the Constituent Assembly. Beg Sahib said that that speech was for the Assembly. It was never expression of Sheikh Sahib's opinion. It was in 51 and was never followed by any resolution upto 53 and not even upto 56 after

11 asked the Court to note

his removal in 1953. What happened during the years 53-56, Mr. Beg, India consistently repeated that this Constituent Assembly was not competent to decide on accession issue. It told Security Council, United Nations, Parliament and the people of Kashmir that at most an opinion could be expressed by the Constituent Assembly of Kashmir but it could not take any action. Sheikh Sahib's personal view fell through because Centre's will prevailed. Sheikh Sahib had to withdraw because officially. He communicated that to India. Mr. Beg asserted that the conduct of Bakhshi Gulam Mohammed in 53, reaffirmed the decision of the Prime Ministers of India and Pakistan for having plebiscite in Kashmir and stated that this decision was taken with the fullest concurrence of the Kashmir Government. Mr. Sadiq joins him. The Constituent Assembly was taken and according to them the issue was before them. Mr. Beg asked if this Constituent Assembly had to decide this issue neither Government of India nor his political adversaries would have said so. Mr. Beg asked that prosecution could not skip over this stand of Bakhshi Gulam Mohammed. Mr. Beg stated that this conduct corroborates that the personal view of Sheikh Sahib on 51 was prevailed upon by Government of India and was not considered correct view.

On 1st of November Sheikh Sahib delivered his speech. There was no motion for adopting it. It was just a speech. The speech had no legal significance. He could not invest the Constituent Assembly with powers to determine a certain thing. It was just like a desire of a man to invest this court with powers to hang. This could not be done. Youvaraj Karan Singh could have by Proclamation of 49 done and yet Sheikh Sahib could not do it. If the President of the Assembly were technically competent he would not have allowed Sheikh Sahib even to deliver this speech, argued Mr. Beg.

Court: On point of Order you could.

Mr. Beg: Usually such a matter is left between the President and the member. Government of India conveyed to Sheikh Sahib that his views were not correct. Sheikh Sahib's speech of 5 November had thus no significance Constitutional, legal or factual, and the Prosecution could not hang on it. Net result was that Govt. of India views about the Constituent Assembly prevail. That view was that Constituent Assembly could form Constitution alone and it could not decide accession, remarked Mr. Beg.

Discussing Art. 370 in the Indian Constitution referred to by the Prosecution as a part of accession issue Mr. Beg stated that such matters did not relate to the question of accession and plebiscite. This Art. had nothing to do with the final disposition of State which continues to be subject matter to plebiscite under United Nations auspices. Mr. Beg asked what was going to happen till that time. They wanted to have certain relations regarding Defence, Foreign Affairs and Communications. Therefore, certain constitutional means had to be adopted so that the State was not left in a jeopardy and reckless conditions. The State could not arrange Defence and Foreign Relations herself. Therefore, till the final disposition of the State certain temporary constitutional arrangements were made. This, therefore, was a transitional and temporary provision and also the caption of this Art. was shown as "temporary and provisional". Mr. Beg quoted case law on this point stating that these headings could not be treated as marginal notes but were important part of the sections themselves. Mr. Beg stated that this Art. throws considerable light on the nature of provisions included in this Art. Mr. Beg further stated that on 17th Oct 1949 Mr. Iyengar presented this Art. to the Consenbly as draft Art. 306 A. In his speech while tracing history etc. Mr. Iyengar stated that conditions were abnormal in Kashmir State and arrangement had to be made for giving a good administration to the State. The Govt. of India committed that people would be given the opportunity to decide their future and the people will be given an opportunity to frame their constitution by Consenbly. Mr. Beg stated that it was thus that this Art. was made temporary. Mr.

L were

Mr. Iyengar assured people that accession would be settled by plebiscite/ and pending that some sort of Constitutional arrangements were made with Kashmir. Mr. Iyengar himself distinguishes the determination of will of the people from the determination of the same by Constituent Assembly. So argued Mr. Beg. Mr. Beg stated that this refuted Prosecution contention itself. India wanted only to make constitutional arrangements with Kashmir. An interim arrangement was proposed to be made by passing this article. That statement was made by Central Minister who was in charge of Kashmir affairs and he was the mover of this article. That represented the mind of the Government of India and the Congress party, asserted Mr. Beg.

Referring to speech of Jawahar Lal Nehru 7 August 1952 Mr. Beg stated that it was completely clear that this article was neither intended to replace the commitments of plebiscite nor could it do so. The Prosecution attempt to produce this as a support of their argument was absolutely incorrect. It was unhelpful to them, affirmed Mr. Beg.

Mr. Beg then referred judgement produced by the prosecution i.e. Prem Nath v/s State of Jammu and Kashmir AIR 1959 Supreme Court. Mr. Beg submitted with due deference the judgement of their Lordships that this ruling was an authority on one point only and that was whether Youraj could in 1950 abolish Big Landed Estates without compensation in an arbitrary way. Their Lordships declared that all powers vested in Maharaja till June 1959 and by virtue of section 5. In 1949 he transferred those powers en toto to Karan Singh. He thus got absolute power and in 1950 he could abolish Big Landed Estates without giving any compensation. In 1950 there was no legislature and no responsible government and Maharaja His Highness and Youvaraja had not become constitutional monarchs. According to this ruling Karan Singh was competent to do this. Mr. Beg stated. The ruling did not pronounce on other issues as raised by the prosecution here. These were not agitated in the Supreme Court by parties to that case.

Referring to various other points raised by prosecution Mr. Beg stated that Mr. Pathak referred to the criticism of the accused on black laws prevalent in Jammu Kashmir like Preventive Detention Act and Security Rules. Mr. Pathak had made an exception to show that these were normal laws. Mr. Beg stated and affirmed that the State had a peace of grave and the people were governed by monstrous laws and could be detained for 10 years without any reason or ground. In India there was a similar law for less aggressive and in Kashmir it was far more monstrous. There were some redeeming features in Indian Act and monstrous features in Kashmir Act. Many stalwart workers of Plebiscite Front were in detention at this time even. Citizens were denied to use their citizenship rights. It had given such sweeping powers to the executive that it would be of Shame to a civilised Government to commission such law for the purpose of administration. It denied all fundamental rights and liberties.

Enemy Agents Ordinance was one of the most horrible piece of legislation and authorising camera trial provided death for the offender. He quoted Mr. Mohiudding Shawl's case as an instance and argued how he was subjected to unspeakable hardship for the last four years during which he had been facing a trial in this case.

He then mentioned Security Rules which banned even public meetings. He then referred to the order passed by the President of India where certain fundamental rights were given on one hand and on the other hand these very rights were taken away by Preventive Detention Act which allowed the executive to detain a person for 10 years now. These things finally shook the confidence and the Plebiscite Front was not responsible for that asserted Mr. Beg. Prosecution Counsel stated that these laws were good because these were upheld by the courts of law. Under jurisprudence Mr. Beg said that the function of court, was to interpret law and not to improve law. Court can apply, expand and interpret law. They could not rationalise law. He referred to see whether legislature was competent to pass law. Parliament may pass constitutional law of Dacca which says that Courts will pass that all blue eyed children should be a good law asked Mr. Beg. uphold this law and even so could it be a good law asked Mr. Beg.

In Nepal a law was passed that complainant should be put

-4-

in jail along with the accused. Courts upheld that law but it was an atrocious law. It could not be a certificate about humane character of law. Even in Habeas Corpus the courts do not pronounce on the nature of the law.

Even in the Security Act and Preventive Detention Act jurisdiction of judiciary has been barred and where judiciary is torpedoes and by passed nobody could claim that that State was a democratic State and welfare State affirmed Mr. Beg. That was a new definition of a student of Constitutional law and the political science.

AFTER THE BREAK

Resuming his arguments Mr. Beg requested the court to note that Public Security Act was a total denial of all fundamental rights. Empowers District Magistrates or any person authorised by government to restrict even the movement of any individual for what that authority may consider the interests of the Security. The most atrocious provision in the Act was the one which provided that no proceedings taken under this act shall be questioned by any court. No judicial remedy was available to an aggrieved person. Thus was Kashmir ruled at present.

Prosecution have failed to cite any law authorising filing of lists of conspirators as has been done here. They have submitted a solitary ruling saying this was a prosecution greatest prejudice caused to the accused there by was that acts of such co-conspirators were tagged on to the accused in order to implicate them. This had been done in order to attract the provisions of Section 10 of EA. A most dangerous weapon for which there was no legal sanction was used by the prosecution. Can they have clear licence of by-passing judicial processes in order to condemn the accused for the actions of others. Could that be a judicial process asked Mr. Beg. Assuming Bagh Ali might have conspired with Khan Mohammed Khan how could that mean that the accused were responsible for their actions. It amounted to alleging that accused and these absent co-conspirators had met together. But there was no proof for anything to suggest such inference. So without any provision of law the list of co-conspirators had been filled. When the accused had objected to this novel practise, they were told it was for their benefit. Now actions of these were attributed and accused were condemned unheard. Full opportunity was afforded to the prosecution to malign them. Case of Begum Abdullah, Maulana Masoodi, and others were instances. It was under no provision of law that that could be done, yet it was employed for a character assassination. These matters are against the very requisites of a free trial. From Miss Mridulla Sarabhar tons of papers were seized. They were examined. Many houses were searched in Delhi. The result was that not even a single document was found incriminating. And yet Miss Mridulla Sarabhar was considered to be a co-conspirator. This monstrous method was employed by prosecution to spread fear and strike terror. It had made impossible for people in Kashmir to live in peace. Was it any surprise if the people had become so much estranged with India. But whose was the fault asked Mr. Beg. Surely not of the accused - he replied. Giving a break up of the witnesses, 229 in number, Mr. Beg stated that they could be categorised in three heads.

(1) 27 were accomplices but they had not been made accused. Applications against them had been submitted by the accused. An accomplice is one who had participated in an alleged crime. Every witness of this category had committed these alleged crimes as admitted by each. What value can be given to the evidence of accomplice held by various High Courts.

Mr. Beg enunciating said that the evidence of an accomplice must necessarily be corroborated in material particular by independent evidence. That corroboration could not be the evidence of other accomplice. In 1955 Jammu and Kashmir High Court it was held that one accomplice could not corroborate other accomplice. A tainted evidence did not lose its taint by repetition; an accomplice could not corroborate himself.

5

Mr. Beg referred to the commentary of Sarkar on Sec. 133 of the Evidence Act. He quoted from Re v/s Bakser Valley. The prosecution had also cited the same case here. The rule of law enunciated there was that evidence of an accomplice could not be corroborated by another accomplice. It was an established principle at now and had matured into rule of law asserted Beg. Manmohan Singh could corroborate Mirchal and Mirchal could not corroborate Hardyal. Corroboration should come from an independent source, extraneous to accomplice evidence. Corroboration of an accomplice by a Govt; servant should also be ruled out because that could not be considered independent. Under the second category would come 55 of Kashmir Police, 16 of Indian Police, 11 of pensioners, 11 C.I.A men, 52 Kashmir Govt; servants and National Conference members. They were 189 in all. All these were directly and indirectly under the influence of the Government leaves hardly 13 persons who ~~are~~ were only chance witnesses. The case was political. The bias and animous would always be there in the minds of these witnesses. Besides these witnesses contradict each other.

The doctrine of corroboration had become very important in law. When the evidence was of accomplices and of partisan witnesses which required close scrutiny. In a case where almost all the witnesses were of this type the principle of corroboration was strictly to be applied. Mr. Beg then referred to Vol. 10 Halsbury's Laws (P. 460) this stated that such evidence must show that the crime had been committed and it must connect the accused with the crime. But Prosecution had very queer notions what was corroborating evidence - or they deliberately do it and confuse things. Giving examples Mr. Beg said, "Attaullah witness is said to have met me; the corroboration is sought by alleging the existence of Reman Circus that day which was attended by him. Supposing that there was Reman Circus ~~xxx~~ going on and suppose also Sajawal Khan was there, thus did that prove that these persons had met me and conspired to overthrow Kashmir Government." Prosecution has tried to confuse the minds. Taking another example out of many Mr. Beg said, "Haffizullah has been produced to depose that he brought one Gun Cotton ~~Saab~~ from Pakistan which incidentally he did not give to any one. It is alleged that the same was wrapped in a newspaper of that side. This ~~was~~ said to be the corroboration of his having brought from that side. This could not be corroboration of evidence according to law. Shahbaz and Karnai ~~were~~ said to have produced voluminous record of Plebiscite Front and Prosecution alleged that this corroborated their evidence. Assuming that it was record of the office of the Plebiscite Front there was not a single sentence incriminating the accused or even suggesting any inference that there was any conspiracy. They must have proved that these documents show conspiracy. On the contrary this very record furnishes the evidence that Plebiscite Front was in continuous correspondence with the dignitaries of Government of India. That established that there was no conspiracy. This ~~is~~ said to have been the confidential record of the Plebiscite Front. It should have any hint of conspiracy. ~~considering it~~ was suddenly seized by police. Prosecution say it does not do that but we produced it to show that these witnesses were of Plebiscite Front therefore what they say must be taken as corroborated. They allege that Begum Abdullah used to visit Sheikh Abdullah in jail. They say that it must be presumed that they talked of conspiracy there. Similarly they say that since accused were in jail together for some time, it must be presumed that they talked and hatched this conspiracy. These presumptions of the prosecution bordered on fantasy. Prosecution had cited 1958 Supreme Court ruling. Mr. Beg stated that it could not help them because in it their Lordships' had held that an accomplice's evidence must be corroborated by independent evidence in material particulars. This had been cited about Bagh Ali and Rahim who had retracted their confessions. Now the prosecution had on the authority of this ruling asked the court not to demand corroboration of the evidence of these persons by independent evidence in material particulars.

continued on page 6.

were

But Bagh Ali and Rahim Ali were accomplices in this Case. In the dealt by Supreme Court the provision was that corroboration of retracted confession was under consideration. It was held that did not require corroboration by independent evidence in material particulars. But this was a conspiracy Case, in which these two persons were accomplices according to prosecution. Therefore, the requirements of corroboration of accomplice's evidence could not be evaded according to this ruling also.

About Bagh Ali's evidence Mr. Pathak had referred to Section 6 Evidence Act. This section did not apply. The question of carrying explosives by Bagh Ali was something connected with facts in issue. It was a fact itself and therefore had to be proved by direct evidence. Section 6 did not help them as that related to the relevancy of such facts which though not in issue by themselves were so connected with fact in issue as to form part of the same transaction. Section 10 also could not be attracted. Major portion of evidence in this Case was inadmissible u/s 10 of Evidence Act. Explaining that section Mr. Beg said that Section 10 of Evidence Act says that anything said, done or written must relate to future. That alone would be relevant. This did not include things done in past. Things relating to the future i.e. having reference to common intention would alone could be relevant. Whatever was done, said or written must relate to the common intention subsisting at that time. When common intention between him and the accused had seized that evidence could not be taken notice of. Almost the whole prosecution evidence was of such nature. It related to the past.

Regarding the illustrations Aof section 10 quoted by prosecution Mr. Beg said that it had been held doubtful by law courts and in-consistent with the section itself. It was not in accordance with common sense. He cited rulings and showed that the explanation of Section 10 was not to be read in the illustration given in that.

Giving a brief characterisation of some witnesses Mr. Beg stated that Mirchal could not be treated as an innocent spy. He was nothing but an accomplice and had he not been there the whole edifice of this alleged conspiracy would disappear. He was the man who had invited Pak officials to send alleged leaflets, pamphlets etc. Beg Sahib submitted that Mustafa, Manmohan and Hardayal should be treated as offenders who had helped to bring lacs of rupees from Pakistan for years. All the three should be brought to dozens of questions they did not reply as they sought the privilege. From what they had deposed it was clear that they had abetting the commission of crimes. Could they be treated as spies or intelligence agents of government. No - asserted Mr. Beg.

Referring to schedule 7 Entry of constitution of India i.e. Central Bureau of Intelligence and investigation Mr. Beg established that it was not applicable to Jammu and Kashmir State. This entry was not applicable to this State. What was then the authority of law for officers of the Bureau of Central Intelligence Act here. (Manmohan and Hardayal. They functioned without jurisdiction. They could not therefore claim privilege. They were acting here against the constitution of India. Therefore section 10 Evidence Act could not extend them any any privilege. Being divested of that authority their participation on and abetment of whatever they told Mirchal do had no sanction of law. In fact they had rendered themselves liable before peral law. In fact they did not only watch and observe. They encouraged and abetted and participated in the commission of offences.

Here Mr. Beg referred the heinous atrocities this Bureau was committing in Kashmir. He requested the court to take notice of the fact as to under what powers this Bureau was operating in Jammu and Kashmir State and had been perpetrating indescribable tortures and cruelties. What was the authority under which the officers of this Bureau had been functioning here when entry 3 of 7 schedule was inapplicable. This was a very grave matter. Gold Medal to some for committing atrocities had been awarded. There was no sanction of the constitution of India behind this. Constitution had been thrown to the winds by these officers and it did not exist at all. Is that their respect for the constitution and for the nation of which they were part and parcel. Millions had sacrificed their lives. The document of constitution was the most sacred thing and all authorities even the President had to swear by it. And here in Kashmir, the officers of the Central Bureau of Intelligence had behaved it as if it did not at all exist. Who was subverting the Constitution? asked Mr. Beg. "Mr. Pathak was aggrieved that my

intellect had been directed to other channels- but may I say with respect that we have even upheld and acted accordingly to constitutional propriety. Our grief that others and not we, have been acting against Constitution-against law, against Democracy"- asserted Mr. Beg, when the Court rose for the day.

Issued by
J&K LEGAL DEFENCE COMMITTEE
JAMMU.

Copy forwarded to the
FOR PERUSAL AND publication. This has the substance
of the full argument.

(G.M. SHAH)
SECRETARY AND COUNSEL,
ALL JAMMU AND KASHMIR LEGAL
DEFENCE COMMITTEE,
JAMMU.

could not depose here without fulfilling requirements which provides pardon for approvers. They were to be treated as accomplices. Mr. Beg affirmed that Parwana should have been treated as an approver because, (i) facts in the Bomb Case and this case were identical; (ii) He could be indicted here along with the other accused and (iii) According to the prosecution the Bomb Case, Hazratbal Case and many other cases fell in the master plan of conspiracy. He thus was actually an approver in this case and without formal tender of pardon his evidence could not be admissible. Mr. Beg denied to have direct or indirect connection with him.

Commenting on his evidence that, "Parwana had love with Atiga who was in Kashmir and wanted to get permission from her father who was in Azad Kashmir to marry her. Mother had married so motto herself during the life time of her husband." Mr. Beg commented that this was a contradiction that the mother married without the permission of her husband but so far the daughter was concerned the permission was thought necessary. Mr. Beg told that this was unnatural and irrational and a unacceptable under section 114 Evidence Act. Parwana crossed the Cease Fire Line near the garages of the UN Observers was again unbelievable. There he met Sajawal Khan and they took him to the Prime Minister of Pakistan, who patted him, and he then was employed for Rs. 60 for carrying alleged activities was again highly improbable. Photograph story of the Intelligence Chief of Pakistan with him and his carrying the camera with him from Kashmir was a fairy tale remarked Mr. Beg. Common sense would not accept this and more so that Parwana got the positive done here in Kashmir. He was in his teens when he met Sajawal Khan and Mr. Noon and who it was said took fancy in him. That was more absurd.

Referring to Mohibullah Beg Mr. Beg said that he was a down right murderer. He received favour from the Government, he was restored to his post and his pay was released with retrospective effect. He was acquitted from the murder case. That all was

To dozens of questions they did not reply as they sought the privilege. From what they had deposed it was clear that they had abetting the commission of crimes. Could they be treated as spies or intelligence agents of government. No - asserted Mr. Beg.

Referring to schedule 7 Entry of constitution of India i.e. Central Bureau of Intelligence and investigation Mr. Beg established that it was not applicable to Jammu and Kashmir State. This entry was not applicable to this State. What was then the authority of law for officers of the Bureau of Central Intelligence Act here. (Mannohan and Hardayal. They functioned without jurisdiction. They could not therefore claim privilege. They were acting here against the constitution of India. Therefore section 124 Evidence Act could not extend them any any privilege. Being divested of that authority their participation on and abetment of whatever they told Mirchal do had no sanction of law. In fact they had rendered themselves liable before peral law. In fact they did not only watch and observe. They encouraged and abetted and participated in the commission of offences.

Here Mr. Beg referred the heinous atrocities this Bureau was committing in Kashmir. He requested the court to take notice of the fact as to under what powers this Bureau was operating in Jammu and Kashmir State and had been perpetrating indescribable tortures and cruelties. What was the authority under which the officers of this Bureau had been functioning here when entry 8 of 7 schedule was inapplicable. This was a very grave matter. Gold Medal to some for committing atrocities had been awarded. There was no sanction of constitution of India behind this. Constitution had been thrown to the winds by these officers and it did not exist at all. Is that their respect for the constitution and for the marriage of which they were part and parcel. Millions had sacrificed their lives. The document of constitution was the most sacred thing and all authorities even the President had to swear by it. And here in Kashmir, the officers of the Central Bureau of Intelligence had behaved it as if it did not at all exist. Who was subverting the Constitution? asked Mr. Beg. "Mr. Pathak was aggrieved that my

Telephone: 707.
Srinagar.

5133.

Jammu.
New Delhi. 32202.

8th June 1961.

Branches:
1. The Dawn Canal Road,
Jammu.
2. 81/48 Diplomatic
Enclave,
New Delhi-21.

THE KASHMIR CONSPIRACY CASE
Resume of Mirza M.A. Beg's argument.

Continuing his arguments Mirza Muhammed Afzal Beg today referred to the commentary on Constitution of India By Mr. Basu. He stated that Article 370 was provisional. Basu had in his second edition of the commentary on page 840 under the title 'temporary provisions' with regard to Jammu and Kashmir State' this Art. was provided to be a provisional article on the political ground because the people had to determine their future by plebiscite whether they would remain with India and thus Constitution of India could only provide for an interim agreement. In subsequent editions this was omitted possibly on political reasons affirmed Mr. Beg. Mr. Beg further stated that this was an evidence from a legal pandit as to why this Art. was temporary. He distinguished between two functions and holds that the Constituent Assembly had nothing to do with the accession issue. Pending plebiscite all this relation was to be temporary. Mr. Beg said that notice should be taken of the fact as to what such efficient commentators understood when this Article was passed.

Mr. Beg then analysed the evidence of certain witnesses and told the court that that would show that these witnesses upon whom the prosecution depended were unworthy of any credit.

He then referred to Abdul Aziz Parwana PW No. 74. He was an approver in Bomb Case. The submissions of the accused was that he could not depose here without fulfilling requirements of 337 which provides pardon for approvers. They were to be treated as accomplices. Mr. Beg affirmed that Parwana should have been treated as an approver because, (i) facts in the Bomb Case and this case were identical; (ii) He could be indicted here along with the other accused and (iii) According to the prosecution the Bomb Case, Hazratbal Case and many other cases fell in the master plan of conspiracy. He thus was actually an approver in this case and without formal tender of pardon his evidence could not be admissible. Mr. Beg denied to have direct or indirect connection with him.

Commenting on his evidence that, "Parwana had love with Atiqa who was in Kashmir and wanted to get permission from her father who was in Azad Kashmir to marry her. Mother had married so motto herself during the life time of her husband." Mr. Beg commented that this was a contradiction that the mother married without the permission of her husband but so far the daughter was concerned the permission was thought necessary. Mr. Beg told that this was unnatural and irrational and a unacceptable under section 114 Evidence Act. Parwana crossed the Cease Fire Line near the garages of the UN Observers was again unbelievable. There he met Sajawal Khan and they took him to the Prime Minister of Pakistan, who patted him and he then was employed for Rs. 60 for carrying alleged activities was again highly improbable. Photograph story of the Intelligence Chief of Pakistan with him and his carrying the camera with him from Kashmir was a fairy tale remarked Mr. Beg. Common sense would not accept this and more so that Parwana got the positive done here in Kashmir. He was in his teens when he met Sajawal Khan and Mr. Noon and who it was said took fancy in him. That was more absurd.

Referring to Mohibullah Beg Mr. Beg said that he was a down right murderer. He received favour from the Government, he was restored to his post and his pay was released with retrospective effect. He was acquitted from the murder case. That all was

was working before was illogical asserted Mr. Beg. In that document Afzal Sahib was mentioned and not Pir Afzal. That also made that document unworthy of credit. Even on that date the accused was in prison, stated Mr. Beg.

Mr. Beg stated that this whole evidence was improbable. His name was not known fully and this allegation was brought against him when he was in jail. This was nothing but untruth. Nothing incriminating was recovered from him. No independent evidence had produced to identify his handwriting. Contents assuming though denying did not prove any ingredient of Section 121A. His case was not at all fit for commitment, argued thus Mr. Beg.

Referring to Pir Abdul Gani Case Mr. Beg stated that there was no evidence to show that he ever met a conspirator, delivered a speech or attended a meeting. His only crime was that he did not toe the line of Sheikh Ghulam Qadir. Not one witness deposed against him. He was told to depose against Sheikh Sahib and Mr. Beg. As a public worker he refused to tell unabashed lie. His confession was almost a forgery. This alleged confession was not even self incriminating. Mr. Beg wondered as to why Peer Abdul Gani was at all included in this case. His case was a fit case for discharge.

Referring to Mir Mohammed Nazir Mr. Beg stated that there were only two witnesses. Mohd. Afzal and Fida Mohd who deposed against him. These were accomplices. Not one independent witness was produced against him. Fida Mohd. was most unworthy and despicable character. Mohd. Afzal was a government servant and thus under influence of government. To meet the ends of justice his Case was fit for discharge, asserted Mr. Beg.

Pir Yalgami was respectable Pir. There was no evidence against him. One single witness Attaullah Beg tells that he happened to be there when Sajawal came. There was no corroboration of this one solitary witness. Even the forged document did not link him with. Even his complicity was not corroborated by any evidence. Mr. Beg submitted that his case was unsubstantial and Pir was entitled to discharge.

Commenting further Mr. Beg stated that this case, of all the accused was legally of that nature. No case was made by the prosecution. If was a fabrication pure and simple. Summing up he said that: (1) There was no evidence whatever that accused came jointly to an agreement to commit an offence u/s 121 A or 32. (2) From the circumstantial point of view an inference would not be legal that such an agreement took place. (3) The ingredients of the section was that the Government should be overwhelmed by terror so that it would collapse. Factually that was impossible in view of the large police force from within and without and in presence of the Indian Army, asserted Mr. Beg. That would have been mad man's dream only. There was no conspiracy as alleged. It was only a means to silence those who wanted self-determination asserted Mr. Beg. (4) All the accused were wedded to plebiscite and this use of force or even harbouring of such ideas would have defeated their object. (5) Prosecution evidence has failed to make a prima facie case. Mr. Beg submitted that the case should be outright rejected and accused discharged.

Arguing the factum of delay in the proceedings Mr. Beg stated that prosecution contention was that accused were responsible for delay. Mr. Beg stated that some of the accused have now become chronic patients of various diseases. He referred to Sofi Sahib, Kh. Ali Shah, Pir Makhdooni, Chikkan Sahib and Mirza Sahib. The intention was to kill the accused by inches. Everything was planned. Mr. Beg submitted that they should be told frankly about it so that they would remain prepared for that. They had not seen their children for the last three years and some for 5 years and this all was determined. They were kept in an oven to be baked amongst serpents, and scorpions. One of their colleagues remains for 81 hours under shower in the bath room and has developed serious rheumatic pains and how this could be believed that they were responsible for delay, asked Mr. Beg.

Time spent in seeking legal remedies could not be termed delay. Delay was number of months for which this case was suspending without any reasonable grounds. The delay was when for 90 days the proceedings were suspended and Mr. Mohiuddin Shawl was taken to Srinagar in Bomb Case and Hazratbal Case accused were not taken to attend their

trial. Mr. Beg asked was not that a conspiracy to end the accused in this way? Money was being spent here like water and streams of it kept flowing to harrass the accused, their friends and relations. That was criminal. Almost all the accused were living on medicine. Even thing was planned otherwise heavens would not have fallen if they were taken to Srinagar. The venue was 200 miles away. Delay could be avoided if venue was changed and that might reduce the fees of the learned friends of the prosecution. He asked the court to clench the main cause of delay. There should be a finding as to how to eliminate the delay- and that according to him would be by shifting the venue to Srinagar where all the three cases Conspiracy Case, Bomb Case and Hazratbal case could be taken up together.

Mr. Beg stated that Defence evidence would have been produced because weakness of the prosecution case was so very glaring. It was not possible for them to produce their witness because of monetary considerations and the climatic condition. Thus the elementary right could not be availed of by the accused, asserted Mr. Beg.

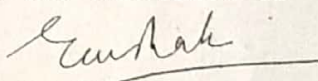
Mr. Beg in short requested the court to change the venue in view of financial and physical considerations. Humanitarian considerations demand that if they were to be tried they should be tried in Srinagar. Root cause of the delay should be removed. He warned here that this scorching heat to which they were subjected would lead to disastrous consequences.

Mr. Beg then submitted that the Magistrate was appointed under Section 14 of Cr. P.C. Without questioning the legality of the appointment he remarked that the government should not have appointed a judge in its own cause. It was a denial of justice to the accused. It was not a question of doing justice which should be availed. But more important was that nothing should be done which would create an impression in the minds of the accused that they would not get justice. Suceptibillity of the accused had to be kept in mind always. Thus argued Mr. Beg when the court rose for the day.

Mr. Beg indicated that he would close his arguments tomorrow and Mr. Mohiuddin Shawl would start thereafter.

ISSUED BY
J&K LEGAL DEFENCE COMMITTEE
JAMMU.

Copy forwarded to the _____
for perusal and publication. This is the substance of
of the full arguments.


(G.M. SHAH)
SECRETARY AND COUNSEL,
ALL J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Grams..... INSAF.
ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJSRINAGAR
K A S H M I R.

Telephones:-
Srinagar. 707.
Jammu. 5133.
New Delhi. 32202.

Branches:-
1. The Dawn Canal Road,
Jammu.
2. 81/48 Diplomatic
Enclave,
New Delhi-21.

THE KASHMIR CONSPIRACY CASE
RESUME OF MIRZA M.A. BEG'S ARGUMENTS
(Concluded)

Continuing his arguments today after a break of two days due to the indisposition of the Special Magistrate, Mr. Beg stated that last time he was discussing the topic that non-enforcement of the amended Criminal Procedure Code had prejudiced largely the rights of the accused. This Act was passed in 1956 and the State Legislature put a condition that it would come in force when State Government would declare so by a notification. For the last 5 years no notification had been passed and the commencement clause had not been enforced. The despotic right of Kashmir Government could not be challenged because High Court had pronounced on it. Much was made by the Government about this Act when it was passed by the Legislature. This Act was only to ensure speedy trial. It was a true copy of the Act 25 of 1955 of Government of India which was the result of thorough experience of legal pandits and luminaries.

Quoting the relevant portion of the Act, Mr. Beg stated that this Act: (i) essentially guarantees speedy trial; (ii) Gives the accused the access to all documents; (iii) Entitles the accused to appear as a defence witness; (iv) Provides as to where the venue should be fixed in view of the conveniences of the parties; (v) When the presence of the accused can be exempted and; (vi) Empowers the courts to try witnesses summarily when their evidence amounts to purgery which / a guarantee to the accused that prosecution would not manipulate false evidence.

Mr. Beg stated that their case was of a peculiar nature. It was a composite of a large number of cases alleged to be the result of offences that took place between 9th Aug, 53 and 29th April 1958. Large number of alleged explosions were said to be parts of this case.

Directly this case was interlocked with Bomb Case and the Hazratbal Case. Facts in these cases and other cases also were produced as evidence in this case.

In the immediate context what-ever had been done in those cases was relevant to this case as those had in impact on this case.

Quoting Vol. 1, MLG 54 page, Mr. Beg stated that amended section 9 gave the power to session judge in the interests of the justice to change the normal place of sitting. The Srinagar Hazrat Bal Case and the Bomb Case would not have been tried in jail had this amended Cr. P.C been applied to the J and K State. The accused could demand the new venue in the interests of justice. Judicial considerations alone were to guide the Sessions judge, asserted Mr. Beg and said that accused would have acquired the right to convince the judge for the change of venue. Giving an example Mr. Beg stated that even Mr. Mitter refused to be a party to try this case in the Central Jail. This continued non-enforcement gave the clue remarked Mr. Beg that it was meant to deny this rights to them at the trial stage.

Quoting sec. 342 Mr. Beg stated that this was a new section in the amended Act wherein the accused could become a witness himself. The word 'trial' in the context did not mean the technical trial which would start in sessions court as was argued by the Prosecution. He asserted that Sheikh Sahib and he himself had much personal knowledge and were this amended Act enforced here they would come as defence witnesses in this case.

The accused could come as a witness in enquiry stage because trial meant the whole proceedings from beginning to end and Cr.P.C. use this word to mean so at many a places.

Court; In 342 A enquiry stage is not included.

Mr. Beg: The courts power to examine the accused prevails over the both stages. I have a right to produce myself as a defence witness about myself.

Court: It should be studied whether this right is allowed for enquiry stage as well.

Mr. Beg further said that this section declares that the accused was a competent witness for the defence. That meant that he could appear on his own behalf also. Both expressions used in the section show that an accused could appear as a witness at any stage. Even the old law did not preclude the committing Magistrate's powers to record the defence evidence and even an accused could become the Defence witness of another accused e.g. he himself as Revenue Minister of Sheikh Sahib Cabinet could be produced as a defence witness by Mir Nazir. The Prosecution according to amended Act was not correct remarked Mr. Beg, and if this new Act was promulgated here could appear as a witness himself. Submitting further Mr. Beg stated that defence stage did not even begin at sessions stage according to old Act. The word trial used here was not meant to be technical meaning of trial at sessions. He remarked that non-enforcement of this Act had deprived the accused of this right. Quoting from Constitution of India he remarked that it removed the ban from the accused of non-appearing as a witness before a court, and amended procedure code gave this right to the accused. Prosecution forestalled this right of the accused and therefore this amended criminal procedure code was not applied to Jammu and Kashmir State.

that Quoting from section 344 of amended Act, Mr. Beg stated that this was a new provision guaranteeing expeditious trial. The whole spirit of the new Act was missing in the old Act. The emphasis for expeditious trial was so great that Magistrate was bound to record the reasons of adjournments. The High Court would have interfered in Hazratbal Case and Bomb Case and this case were this amended Act enforced here remarked Mr. Beg. It was unfortunate Jammu and Kashmir State alone was deprived of this right given to the other parts of India. The cases of many political sympathisers were hanging for the last four to five years without any result.

Referring to the section 485 A Mr. Beg stated that this section compels the witnesses to remain present till the evidence was recorded. The effect of the absence of this provision was that speedy trial was not ensured and prosecution could cause as much delay as was possible for it. He affirmed that in this case Prosecution caused much delay without any reason whatsoever.

Referring to 540 A Mr. Beg stated that that was a new section which empowers the court to exempt the personal attendance of the accused. Mr. Beg referred to the instance that last time this court also agreed that if the amended Act was in force the enquiries in this case would have continued in spite of the absence of 6 common accused of Hazratbal Case. It was incorrect to say on the part of the prosecution that their lot would have been same if they were living in Bombay/Madras remarked Mr. Beg. He contented that that would not have been the case because in these places courts were governed by Amended Act.

Referring to section 479 Mr. Beg stated that this was a new provision and it was a guarantee about purgery. A witness who gave intentionally false evidence could be prosecuted and could summarily tried by the same court. Mr. Beg stated that here in this enquiry stage he could have fully proved that certain witnesses were lying. This would have made the witnesses much more cautious while deposing the false stories taught by prosecution.

A powerful weapon was given to the courts to rectify the abuse of the false evidence. Documents here could be produced that could be shown were fully forged ones. Mr. Beg asked why should the government want to bring the liars to book by enforcing the provision of this Amended Act because that would have exposed the myth of

this conspiracy case.

Referring to Section 251 A Mr. Beg stated that this section gave a right to the accused to demand the production of all the documents that were produced against them. This was a sweeping power to do expeditious justice remarked Mr. Beg. It was unfair to say that the accused did not lose anything by non enforcement of this Amended Act. Mr. Beg stated that in absence of this right they were only allowed to examine a few documents and other documents that pertained to Bagh Ali and Abdul Rahims Cases were not furnished to them.

The prosecution has thus been able to delay the proceedings of this case. It was nothing short of saddism remarked Mr. Beg. The Government was particular to get the amended Act passed but when the question of enforcement came they slept over it purposely to crush and harass the accused in this case, Hazratbal Case and the Bomb Case. Summing up he stated that (1) the non enforcement was only motivated by political considerations against the accused and (2) This new act was a check on the delays and guaranteed expeditious trial. This resulted to a grave prejudice against the accused and also amounted to denial of justice asserted Mr. Beg, more so when it was claim-that this was a welfare State and India was behind it.

Mr. Beg stated that he did not like to give broad facts constitutional and legal at this stage. For a prima facie case broad ingredients of the offence should be substantiated as laid down by law. Prosecution had completely failed to do that. They have not come near the provisions of law by producing so much evidence oral and documentary.

Mr. Beg stated that it was alleged that they "by show of force" or "use for force" meant to overthrow Kashmir Government. Section 350 defines use of criminal force. Mr. Beg commenting on this stated that criminal Force must be used to a person and not a property and therefore the allegation that criminal force was used against Alocha Bagh or Samba Bridge did not mean overthrow of Kashmir Government etc. No force was used against the personal of Kashmir Govt. The person using the force and the person against whom it was used must be present and Law excludes the use of criminal force by proxy. remarked Mr. Beg. He then referred to case law AIR 1940 Peshawar and AIR, 1934 Lahore 454 on this point. Both the judgements lay down that the force must be used to a person and not to a property.

Court: These sections relate to chapter 16 of RPC. This related to offence regarding the State.

Mr. Beg: Definitions would not change.

Court: According to you then it would not apply to Govt.

Mr. Beg: Govt. is an animate person. It cannot be done by proxy. The prosecution had throughout failed to make up the ingredients of the offences.

AFTER THE BREAK

Resuming his arguments Mr. Beg stated that the arguments of the prosecution in this case also could not substantiate the allegations. It were only political considerations that had motivated this prosecution against them. The people were wedded to the right of self-determination and those who stood firm on it were involved in fictitious cases asserted Mr. Beg. He said that everyone among them wanted an honourable settlement of this dispute by which peace could be brought to the Sub-Continent and this dispute could not solved by convictions and if they were convicted the uncertainty would remain same as before. He appealed to all the concerned to take a calm and cool view. He asserted that Kashmir did not enjoy settled conditions and so the plea of prosecution that holding of plebiscite in Kashmir would unsettle the conditions was not correct. He affirmed that the position continued to be chaotic and disturbed in Kashmir and conditions were already upset. He stated that in this uncertain condition Law and Rule of Law had become first casualties. In the declaration of the Delhi; Jurists Commission held that the rule of law should uphold the dignity of individual vis-a-vis his social, economic and political rights.....

4

That was denied to Kashmir. He referred to the foreword of Mr. Setalvad to that declaration of Delhi. All was a mere talk it was not implemented at home and denied to 40 lacs of Kashmiria, remarked Mr. Beg.

He referred to a news item in a paper that in recent months 100 explosions took place in Kashmir. Assuming it to be correct Mr. Beg was apprehensive that this was the result of uncertainty and said that peace could only be achieved by an agreement of the parties concerned.

He stated that while arguing he might have been harsh in his tone but it did not mean that any kind of bitterness was against any individual whatsoever. He apologised if anyone took that as a personal offence.

He thanked the court for the patient hearing given to him.

Concluding his arguments he hoped that everyone would contribute for bringing peaceful settlement of Kashmir Dispute that uncertainty could be terminated and peace restored in the Jammu and Kashmir State.

He denied all the allegations of the prosecution against himself and the other accused. He asserted that no admission was made while arguing the case.

Court: When will Mr. Shawl start ?

Mr. Shawl: Next time that suits the court.

At this stage the court rose for the day and ordered that the court would assemble tomorrow at 9.30 A.M.

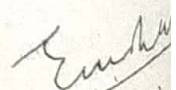
.....

ISSUED BY
The All J and K Legal Defence Committee

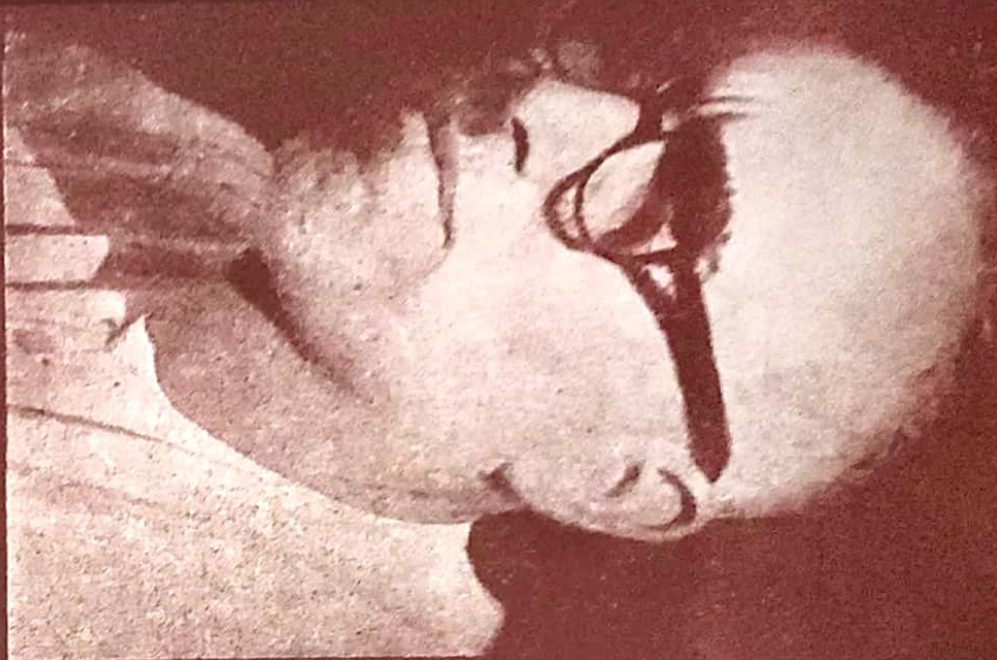
.....

Copy forwarded to _____
for perusal and publication. This is the substance of the full argument.

Jammu,
11th June, 1961.


(G.M. SHAH)
Counsel & Secretary
All J and K Legal Defence Committee

.....



ਮੈਂ

ਬਚਾਵ

ਕੇ ਗਾਇ...
੧

मेरे बचाव के गवाह

१५ जनवरी १९६२ को काश्मीर साजिश केस की सुनवाई के समय बचाव के गवाहों की सूची पेश करने के बारे में स्पेशल मजिस्ट्रेट के प्रश्न के उत्तर में शेख मोहम्मद अब्दुल्ला ने अदालत को सम्बाधित करते हुए कहा :

“इस समस्या पर मैं दस-पन्द्रह दिनों से बराबर विचार कर रहा हूँ कि मुझे अपना बचाव पेश करना चाहिये या नहीं। जो आरोप मुझ पर लगाये गये हैं उन पर भी मैंने विचार किया। पहला आरोप जो मुझ पर लगाया गया वह यह है कि मैं किसी तथाकथित साजिश में सम्मिलित हूँ जो ९ अगस्त १९५३ से आरम्भ होकर २९ अप्रैल १९५८ तक चालू रही। आप भी जानते हैं और सारा संसार जानता है कि मैं लगभग इस पूरी अवधि तक जेल में था जहाँ मुझ पर भारतीय सेना, सी० आर० पी०, मिलिशिया और हथियारबन्द पुलिस का दिन-रात पहरा रहता था। अब आप ही बताएँ कि मैं यह साबित करने के लिए कि मैं जेल में था, कौन सा बचाव प्रस्तुत करूँ? मेरा तो बचाव यह है कि मैं जेल में था और इस्तग़ासा भी इस तथ्य से भली भाँति परिचित है। मुझे आश्चर्य है कि इस प्रत्यक्ष सत्य के सम्मुख मुझे तथाकथित साजिश में शरीक क्यों किया गया। साजिश के प्रमाण स्वरूप इस्तग़ासा ने मेरे विरुद्ध केवल टाईप किया हुआ कुछ पंक्तियों का एक पत्र, जिस पर न किसी का नाम है और न कोई तारीख और जिसको कहा गया है कि मैंने भिजवाया, अदालत में पेश किया और इस तथाकथित पत्र के उत्तर में इसी प्रकार का अर्थात् टाईप किया हुआ बिना नाम और बिना तारीख का एक पत्र भी पेश किया। अब मैं इस बात का क्या बचाव पेश करूँ?”

मजिस्ट्रेट : “यहाँ प्रश्न केवल यह है कि क्या आप बचाव के गवाहों की सूची पेश करना चाहते हैं या नहीं?”

शेख साहब : “किन्तु अपना बचाव पेश करने से पहले प्रत्येक व्यक्ति को अच्छी तरह समझना होता है कि उस पर कौन से जुर्म का आरोप है। मुझ पर ९ अगस्त १९५३ से २९ अप्रैल १९५८ तक साजिश

करने का आरोप लगाया गया है और इस समय मैं जेल में बन्द था। अब क्या मैं इस बात की गवाही पेश करूँ कि मैं जेल में था? दूसरा आरोप यह लगाया गया है कि मैंने जेल से कुछ पत्र लिखे जिनको स्पष्ट कार्य (Overt acts) कहा गया है। निस्संदेह वे पत्र मैंने लिखे थे और वे सुपरिन्टेन्डेंट जेल द्वारा नियमित रूप से सैन्सर होकर जाते थे परन्तु आपने यह नहीं बताया कि इनमें स्पष्टतः प्रकट कार्य (Overt acts) क्या हैं? भारत में विद्वानों की कमी नहीं और आप तो साहित्य से स्वयं भी परिचित हैं। आप ही बताइये कि उनमें कौन सी बातें अपराधमूलक हैं ताकि उन के बारे में सफाई पेश की जा सके। तीसरा आरोप मेरे विरुद्ध यह है कि मैंने कुछ भाषण दिये जिनमें इस्तग़ासा के कथनानुसार, साम्प्रदायिक धृष्टि फैलाने का प्रचार किया गया। वे सभी भाषण आपके सामने मौजूद हैं। मैंने उन भाषणों से भी, जिनके टेपरिकार्ड यहाँ बजाये गये, इन्कार नहीं किया। भाषण मैंने दिये, क्योंकि उसका मुझे अधिकार था। भाषणों की जो रिपोर्टें आपके सामने हैं वे लगभग ठीक ही हैं और जो बातें मैंने उन भाषणों में कहीं वे वही हैं जो मैं सदा से कहता चला आया हूँ और भविष्य में भी कहूँगा। उन भाषणों में सदाचार के उपदेश दिये गये हैं और उन में मैंने लोगों से यही कहा कि वे वास्तविक अर्थों में इन्सान बनें तथा पाशविक जीवन न अपनायें। यदि ऐसी शिक्षा तथा उपदेश देने के लिये अधिकारी यह चाहते हैं कि मैं सज़ा भुगतूँ तो मैं हाज़िर हूँ।

एक आरोप मेरे विरुद्ध यह भी है कि जिन दिनों मैं जेल से बाहर था तो बहुत से लोग मुझ से मिलने आते थे और मेरे घर पर गुप्त सभाएँ होती थीं। मैं स्वीकार करता हूँ कि हजारों लोग मुझ से मिलने आते थे परन्तु उन के साथ कोई गुप्त परामर्श नहीं होता था बल्कि आम खुली बातें होती थीं। जहाँ तक साज़िश वाली बात का सम्बन्ध है तो उस समय मैं जेल में था। मैं इन बातों का क्या बचाव दूँ? दिल्ली तथा रियासत जम्मू व काश्मीर में जिन लोगों के हाथ में सत्ता की बागडोर है यदि वे चाहते हैं कि मैं सदा जेल में बन्द रहूँ तो मैं तैयार हूँ। जब तक दिलों और दिमागों पर ताले पड़े हुए हैं, जेल के तालों की शिकायत भी क्या। परन्तु मैं

जेल में रहूँ या बाहर रहूँ इससे मेरे उद्देश्य में कोई अन्तर नहीं आ सकता। जिस उद्देश्य के लिए मैं संघर्ष करता रहा उस पर मैं सदा स्थिर रहूँगा। मैं भारत तथा पाकिस्तान की उन्नति तथा समृद्धि का आकांक्षी हूँ। मैं कोई ऐसी बात नहीं कर सकता जिससे इन देशों की शान्ति तथा आपसी सम्बन्धों को कोई हानि पहुँचे। भारतीय उपमहाद्वीप के बटवारे की जिम्मेदारी मुझ पर नहीं। जो लोग बटवारे के जिम्मेदार हैं वे आज सत्तारूढ़ हैं। जिन लोगों ने हिन्दुओं मुसलमानों तथा सिक्खों में एकता बनाए रखी और जिन्होंने साम्प्रदायिक प्रेम तथा बन्धु भावना को बनाए रखने का सदा प्रयत्न किया वे आज जेल में बन्द हैं।”

सफाई के गवाहों की कोई सूची पेश न करने के कारणों पर प्रकाश डाल चुकने के बाद शेख साहब ने कहा, “मेरे बचाव के सर्वोत्तम गवाह स्वयं पं० जवाहरलाल नेहरू हो सकते हैं, बख्शी गुलाम मोहम्मद मेरे बचाव के गवाह हो सकते हैं। आप भी इस रियासत के रहने वाले हैं, आप मेरे गवाह हो सकते हैं और भारत का बच्चा बच्चा मेरा गवाह हो सकता है। परन्तु आप बताएँ तो सही कि मैं क्या बचाव पेश करूँ और किन आरोपों का बचाव प्रस्तुत करूँ?”



THE
KASHMIR
CONSPIRACY
C_A_S_E.

Resume of Defence Arguments
By

Mr. Mohiuddin Shawl.

(13th June to 20th June)
1961.

Issued By
Legal Defence Committee,
J&K State.

Grams... INSAF.
ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ.....SRINAGAR
K A S H M I R

Telephone:
1. Srinagar. 707.
2. Jammu. 5133.
3. New Delhi. 32202.

Branches:
1. The Dawn, Canna.
Jammu.
2. 81/48 Diplomat
Enclave,
New Delhi-21.

13th June, 1961.

THE KASHMIR CONSPIRACY CASE
Resume of Mr. Mohi-u-Din Shawl's 1st
day argument.....

Mr. Mohi-u-din Shawl began his argument today. Before starting his arguments and explaining other aspects of the case he referred to the loss he had suffered in the recent fire in Anantnag. He expressed thanks to those who helped him in this calamity. He submitted that in view of this catastrophe a pati hearing may be given to him, so that he could explain his case fully.

Continuing further he stated that he listened with patience the arguments of the Senior Prosecution Counsel who had tried to show the dark side of the case and had tried to push to the background the bright side. Inferences from certain concocted documents and perjuries were not expected from a person of his eminence, remarked Mr. Shawl. He referred to his arrest in 1957 under the Enemy Agents Ordinance. He related the hellish conditions to which he was put with other accused of this case. When he received the summons of this case in June 1958 he felt a little comfort because in that case all rights guaranteed by law were refused to the accused en toto. He made it clear that such sufferings would be borne calmly by those who were wedded to the cause of the people for securing them the right of self-determination. He asserted that he and other accused were in no way connected with the allegations made by the prosecution.

He stressed that whenever any prosecution witness spoke something which revealed that he was tutored and the documents were forged the prosecution counsel in spite of their protests not allow witness to speak the truth.

To unfold the big myth of the prosecution built since 1953 he requested the court to consider that whenever a witness on cross-examination by them revealed something in the favour of the accused a supplementary list of witnesses was produced in order to remove the defect. Perjured witnesses were put in the witness box to sustain the myth of the conspiracy. He was apprehensive that prosecution would try to rectify further defects if they were not stopped by the court from this and requested the court not to permit the prosecution to bring in new evidence to sustain this tumbled down story.

Referring to para 12 of the complaint he asserted that investigation of the FIR 100 was still going on. It was only to defeat the provisions of Cr.P.C and the fundamental rights. Prosecution could by this procedure produce further evidence. On 11th June 1958, accused had submitted that prosecution should produce FIR 100 of 57. That was refused then and was refused now also. The result was that investigation under which anything could be done was going on. Referring to the alleged explosions he stated that the prosecution alone knew where and when these happened. Investigations were still going on and at any stage irrespective of the opinion of the judge prosecution could put fresh lists of witnesses and produce new forged documents.

continued on page 2.

He asserted that on this account they had suffered much. Since it was against fundamental rights and constitution he submitted that prosecution should be barred to repeat it now.

Continuing further he referred the two cases against him i.e. State v/s Rehaman Shagoo and this case. The first case was u/s 3 EAO; Section 3, 4, 5 and 6 Explosive substances Act, 11 20-B R.P.C. Rule 28/32 Public Security Rules. The present case was u/s 12 120-B R.P.C. and rule 32 of the Security Rules. The fact was that the charges were same. He referred to the reply to his 1st question u/s 342 put by the Special Judge trying the Bomb Case to substantiate his plea.

Mr. Pandey: I do not know if the record of that case is the record of this case also.

Mr. Shawl: -The evidence and the record of that case forms the part of this case and the record is still here.

Continuing further he stated that under these very alike questions a charge was framed against him in that case.

Court: The record is here. Can you refer to that record.

Mr. Shawl: When a part of record is lying in this court and /also Prosecution uses that record, I as an accused am entitled to refer to it. I am an accused in this case and Bomb Case. The certain portion of that record was sent here and thus it became relevant here for to argue when the charges here and there were analo

Continuing further he said that in both cases the charges were that there was a conspiracy to overthrow the Government. He submitted that these cases were framed against him only on two documents Exp. EA/20 and EA/21. He referred to the evidence of Abdul Aziz Parwana PW 2 in Bomb case and PW 74 in this case who stated that one of the documents was meant for Mr. Shawl or somebody else. He made it clear that these two documents formed the basis of allegation against him. The documents were neither delivered, nor addressed to him, nor recovered from him. The main charge of overthrowing the Government was common to both the cases. The witnesses produced in Bomb Case were examined in this case also. He affirmed that this was because the conduct of Mr. Shawl was not palatable to the prosecution during the trial of Bomb Case. The evidence was forged and when Prosecution could not bent him this new case was instituted against him. He asserted that when the offences, witnesses, documents, charges and accused were the same the double prosecution was contrary to provisions of law, justice and play. The law did not permit and constitution would not allow and even common sense would refuse to accept this jeopardy affirmed Mr. Shawl. He referred to Art 20 clause 2 Indian Constitution, on this point which states that no person can be prosecuted twice for the same offence. He read out the objections raised about it on March 23, 1960 in an application in this court. When he was to be transferred to Srinagar to stand the trial in Bomb Case and stated that according to law and Constitution this indulgence to prosecution could not be allowed and amounted to a grave prejudice to the accused. He stated that he had repeated this anomaly on examination u/s 342 in this court. He had also raised this objection in his written statement on January 4, 1960 that charge in this case and Bomb Case were identical and evidence oral and documentary was fabricated. The opportunity was availed by him as soon as he got it about this wrong procedure that was followed in his case asserted Mr. / . He referred to case law of Allahabad on this point. It was for the prosecution to show that this plea was not correct. The powers of the court thus could be / asserted Mr. Shawl because law provided that there should be no double prosecution."

Court: There can be two views.

Mr. Shawl: When prosecution itself accepts that the powers of the Court were not exhaustive with regard to certain matters not provided by the code then no other meaning could be taken. He quoted 1940 Nagpur in support of his arguments and requested the court to ask the prosecution to enter a 'noelli prosecue'

for him in this case.

Court: Bring a direct application about it.

Mr. Shawl: I as an accused want patient hearing from the court."

Continuing further he submitted that prosecution be asked to drop this case against him and if prosecution refuses to do that then proceedings here could be quashed by this court. He cited 33 Calcutta 1926, 1 Lahore 339, 429 Calcutta 1934. in support of his arguments. Thus could this double jeopardy be avoided affirmed Mr. Shawl. The Cr. P.C. did not debar the powers of the court from quashing the proceedings against him because that was the purpose of law and justice in such cases, asserted Mr. Shawl.

Referring to the enabling clauses of Cr. P.C. Mr. Shawl stated that 561-A gave the inherent powers to courts to do what justice demands.

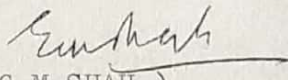
Court: It refers to the High Courts.

Mr. Shawl: I will show that your honour has also the powers. Elucidating this he referred to reasons given by Chitley for this legislation because at times certain provisions might be missing to provide remedy for various circumstances. He stated that prosecution was vexatious, frivolous and full of male-fides in both the cases and thus double prosecution should be ended. He cited case law of various High Courts on this point. He showed from this case law that a subordinate court / exercise its inherent powers when Cr.P.C. was silent. According to the latest ruling of Madhya Pradesh 1961 the sub-ordinate court was empowered to prevent such abuse of law which prosecution had made in his case asserted Mr. Shawl.

He was discussing this topic when the Court rose for the day.

ISSUED BY
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Copy forwarded to the _____
for perusal and publication. This is the substance of
full argument.


(G.M. SHAH.)
SECRETARY AND COUNSEL,
ALL J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Grams.....INSAF
 THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
 SHAHEEDGUNJ.....SRINAGAR
 Telephone:- K A S H M I R Branches:-
 1. Srinagar. 707. 1. The Dawn Canal Road,
 Jammu.
 2. Jammu. 5133. 14th June, 1961. 2. 81/48 Diplomatic
 Enclave,
 3. New Delhi. 32202. New Delhi. 21.

THE KASHMIR CONSPIRACY CASE
Resume of Mr. Mohi-u-Din Shawl's argument.
(2nd Day)

Resuming his argument today Mr. Shawl stated that double prosecution was not allowed by law and this court too had the inherent powers to quash the prosecution against him. Quoting from MLJ he said that the Cr.P.C specifically provides that the subordinate court could exercise inherent powers. He quoted case law of Patna, Madhey Pradesh on this point in which it was held that subordinate courts could exercise inherent powers to secure ends of justice because laws did not provide remedy for all inconveniences. He believed that as such the court would exercise the inherent powers as provided by law and quash the proceedings against him. Continuing further he argued that had the other side known that they were dealing with a magistrate who had the popularity of independence of judgment they would never have dared to have double prosecution here. He hoped that the abuse of the process of law would not be allowed and submitted that prevention being better than cure this double prosecution here should be quashed. It would mean stopping injustice which was the aim of law itself.

After this Mr. Shawl discussed the evidence of Abdul Aziz Parwana and its worth. He called him a 'pampered child of prosecution'. He stated that his whole story was perjured, tutored and faked. Enemy Agents Ordinance under which he was tried was a harsh and drastic measure and the police through Counsel for the prosecution could do and undo things. He contended that such arbitrary powers were given to the presiding officer of that court that it was difficult to check him and said that the record was full of such instances. The judge there could stop the cross-examination of the witnesses. The procedure there was inhumane and cruel.

Referring to Abdul Aziz Parwana P.W. in this case he said that he never knew Parwana till he was produced in that court. He stated that his deposition under cross-examination that he (Parwana) met Malik Feroz Khan Noon, the then Foreign Minister of Pakistan, at the age of 16 years in 1955 was nothing but an absurd lie and a tutored story. Mr. Shawl here referred to his oral statement u/s 342 and said that he never knew this Parwana and whatever he told here was a bundle of lies. He could have come as a witness and deposed on oath in this court but as amended Cr.P.C was not applied in this State he could not do so and thus he was denied of this right by which he could defend himself. He had to depend on the cross-examination of this lad alone in view of these restrictions and he affirmed that he succeeded in exposing the myth of the prosecution from the evidence of this witness which was full with untruth and contradictions.

Arguing further he said that State v/s Rehman Shagoo hinged round on this person Abdul Aziz Parwana. The number of the prosecution witnesses was 44 and other evidence of 43 P.Ws depended mostly on what this lad of 16 related. When the list of co-conspirators was submitted on 27th March 1959, here first reference about this PW was made. The Government notification of March 27, 1959 authorised Abdul Aziz Parwana to depose here in this Court. According to the prosecution itself he was a conspirator because it was mentioned when the list of co-conspirators was submitted here. The credibility of the P.W being in question he submitted that this PW was a conspirator and prosecution did not observe the mandatory provision of Cr.P.C and thus they should

2

suffer the consequences because his evidence had no value and in view of this nothing could be believed against the accused. He referred to the rulings 186 H.C. Bombay 1935 and 21 Bhopal 1953, where it was held:

"... that an accomplice could be granted conditional pardon by a magistrate and the police had no right not to charge an accomplice. The testimony was unworthy of credit. Such evidence amounted to perjury and should be ruled out."

Commenting on this Mr. Shawl said that this P.W. according to his own testimony was a conspirator and Abdul Rehman Shagoo accused No. 1 in Bomb Case had to act under him and thus he being an accomplice his evidence was unworthy of credit. He was let on bail soon after he deposed in Bomb Case. That too illegal according to Sec. 337 sub section 3. The trial in that case had not concluded yet and law provides that such person should remain in judicial custody till the trial was concluded. He cited page 4 Bhopal 1956 in support of his argument.

Court: What is the idea of this argument?

Mr. Shawl: When he is released on bail by that court there was connivance on the part of the prosecution. He should have been kept in judicial custody. That was not done. So he obeyed the behaviour of the police when he was produced here because he was granted bail.

Continuing further he stated that law did not attach any value to the evidence of such a witness. A witness should not be under influence of police. On bail he became highly influenced by police. The court was debarred from releasing him on bail according to express provisions of law and thus whatever he deposed was of no credit and value in law.

Mr. Shawl argued how this witness after his arrest on July 14 was treated by the police and how the abuse of law allowed to continue when this lad of 16 was allowed to remain for 12 days with Sheikh Gulam Qadir S.P., CIA, during which period his confession was recorded by ADM. Quoting from his deposition that: ".....I have never been in thana Kothi Bagh... I was kept in a room next to the office of Sheikh Gulam Qadir". Mr. Shawl termed this behaviour of police most peculiar and contrary to the provisions of law and conduct.

Commenting on this he stated that the room next to the office of Sheikh Gulam Qadir was not a judicial lock up and thus he was not in a judicial custody. This witness revealed in Bomb Case that his confession was recorded on 23rd of July for 12 days he was with Sheikh Gulam Qadir and was always sent back to his custody. His confession could thus not be voluntary one asserted Mr. Shawl. For 10 to 12 days he was sent to Magistrate for recording the confession and from there he was always sent back to the custody of this S.P. The action of the ADM was also illegal and this all shakes the credit of the testimony of this P.W. and whatever he said or did was obviously tutored and under police influences and thus unbelievable and unworthy of any credit.

AFTER THE BREAK.

Resuming his arguments after the break Mr. Shawl repeated that this witness was for 10 to 12 days with S.P., CIA, Sheikh Gulam Qadir and during that period his statement was recorded by the police and this so called confession was recorded by the magistrate.

Revealing the antecedents of this witness Mr. Shawl stated that this P.W. was before and after his arrest an employee in the Central Labour Union of Amira Kadal. He was taken then to S.P., CIA, and was kept there. His second statement before the police was dated 14.7.57 i.e. two days after his first statement before the police. The reason for the delay was yet unknown asserted Mr. Shawl.

This statement tells about the seizure of some alleged documents from his father's house. When Parwana was arrested a statement was recorded and there was nothing on record that Parwana told anything about the documents seized at his house. The court had to see the credibility and veracity of his deposition and also to take his possession and status in life into consideration. Mr. Shawl remarked that P.W. omitted here certain things and deposed before the Special Judge in Bomb Case and improved upon certain things here. That too makes his evidence unworthy of credit and shows the influence of police over him, affirmed Mr. Shawl.

He quoted from his deposition and showed that the position in life of this prosecution witness was very low and he was of a wandering lust type lad. His father was a boiler in the Govt. Silk Weaving Factory. His other three brothers were government employees. He himself was personally an employee in the State Central Labour Union. As a clerk there he had to meet M/S Bakhshi, Sadiq, Saraf and Bakhshi Abdul Rashid off and on. This person was thus under Govt. influence right upto the time of his arrest and could never be called an independent witness.

Mr. Shawl accused him to be a saboteur because in his statement he deposes that it was on the instance of Sajjawal Khan of Pakistan that he joined the National Conference. So allegedly under the dictates of somebody he had to join the National Conference to commit sabotage.

Elaborating his partisan character Mr. Shawl stated that as an employee of State Labour Union he was a member of the National Conference. Abdul Gani Atash his brother was a government servant and was a witness in Bomb Case. All the male members including he himself were government servants.

Mr. Shawl argued that this P.W. was of a bad character. On his house search whisky bottled were recovered and the seizure memo says that these were empty. Inferences could be drawn and more so when Sheil Gulam Qadir was present. Prosecution stated that these bottles were in his possession and his character could thus be assessed. He added that his brother Abdul Gani Atesh was a worst bad character. He enticed a married woman Sajja by name to marry him in spite of the fact that her husband was living. Parwana followed suit and entices her girl Atiqa and this clearly showed that their's was a gang of bad characters. Under Sec 57 Evidence Act the court could take judicial notice of the fact that the marriage could be lawful after a civil decree of divorce was obtained from a court of law or Sajja had been divorced by her lawful husband.

Court: This is a question of marriage and how is it relevant here. Mr. Shawl: It is the question of the character of this whole family. Elucidating further he stated that the whole family was a characterless group. Parwana was employed on the recommendation of Bakhshi Abdul Rashid and still says that he did not know Bakhshi Hamid was the brother of Bakhshi Gulam Mohd. This was unbelievable story asserted Mr. Shawl and thus his veracity could be assessed. Mr. Shawl asked could this be believed that a lad of such mean and doubtful character could be trusted by Plebiscite Front for alleged espionage. This was a grossest lie and fabricated story as was obvious from his own evidence.

This sort of person used to carry letters from Kashmir across the Cease Fire Line as alleged by the prosecution. Mr. Shawl stated that Plebiscite Front had no connection with him direct or indirect and this prosecution witness himself admitted this fact on his cross-examination. Here Mr. Shawl read out the relevant portions from the P.Ws evidence in support of his argument and asked how could he know the accused Mohi-u-Din Shawl when he admits that he did not know any worker, member, or office bearer of the Plebiscite Front. Hence his evidence that he delivered a letter to Mr. Shawl as soon as he came back from Pakistan was a tutored and faked story. He also showed the contradictions in his statement and said that he was a perjured professional witness. His affiliations with Plebiscite Front were imaginary and were the result of tutored lessons he got from the prosecution under whose influence he always had been affirmed Mr. Shawl and thus his evidence was false and needed outright rejection.

Referring to the documents alleged to have been seized from the house of Ahmed Dar the father of Abdul Aziz Parwana, Mr. Shawl stated that were this correct then his father would have been produced as a witness by the prosecution. To cover up this defect the prosecution tried to show that something was in the possession of this Parwana but they failed hopelessly in that endeavour. Further elucidating he said that his statements were in quite contradiction of one another and even the seizure memo and his examination -in-chief varied in substance and essence. In the seizure memo it was shown that Bombs were recovered by police on his house search and in his deposition he stated that he handed those to police himself. The logical inference was that whatever was seized was not seized from the possession of Abdul Aziz Parwana. Prosecution story was concocted and fabricated.

The Court rose for the day.


.....

Issued by
All J and K Legal Defence Committee.

Copy forwarded to _____

for perusal and favour of publication. This is the substance of full argument.

Jammu.
14th June, 1961


(G.M. SHAH)
Counsel and Secretary,
All J and K Legal Defence Committee.

THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ.....SRINAGAR.
K A S H M I R
Grams...INSAF
Telephone: 707.
1. Srinagar. 707.
2. Jammu. 5133.
3. New Delhi. 32202.
15th June, 1961.

Branches:
1. The Dawn, Canal Road,
Jammu.
2. 81/48 Diplomatic
Enclave,
New Delhi-21.

THE KASHMIR CONSPIRACY CASE
Resume of Mr. Mohi-u-Din Shawl's Argument.
(3rd.....Day.)

Resuming his arguments today Mr. Shawl referred again to the possession of seized documents and other material and stated that; (i) Abdul Aziz Parwana and his father were living jointly and; (ii) The ownership was with the father and the possession was with five persons. He said that under law it was essential therefore, to produce Ahmed Dar in witness box and be asked about all activity of the investigating agency. He was a material witness. Mr. Shawl then referred to Abdul Gani Atash's marriage with Sajja and said that Parwana desired to marry Atiga and that motivated Parwana to go to Pakistan to seek the permission of her father and thus Atash was a material witness about it. Parwana did not allege that he did so on the motion of any political worker. All the four trips to Pakistan he did on his own accord and thus Ahmed Dar and Atash could throw light on this aspect of the case, asserted Mr. Shawl.

Elucidating further he said that Parwana left for Pakistan on 25th Aug, 1955, Ahmed Dar informs the Information and Broadcasting Department about this and this document was on the file of the Special Judge Sringer, as Exp. W 14/1. This document was allegedly signed by Gulam Ahmed Dar. To prove this document Kidar Nath Sharma an employee of this State was produced and his statement revealed that he had nothing to do with it. G.A. Dar alone could be a material witness to prove this document.

Further he stated that another aspect about it was that the document allegedly seized from Dar's house reveals that Sajjawal Khan used to send greetings to Abdul Gani Atash and G.A. Dar. According to this document and according to Parwana's own evidence Gulam Ganai in Sept 56 had brought Rs. 5000/- for Begum Kara and Abdul Gani Atash took that money. Parwana came in the morning and asked Ganai as what he had brought. He gave two letters to him. From the letter to Begum Kara he came to know about the money. Atash only gave him Rs. 2000/- for Begum Kara. Atash had given the receipt for the full amount. Parwana stated that Begum Kara had informed Sajjawal Khan that she had not received the full amount. This fact was mentioned in the alleged document Exp. W2/8 seized by police. Mr. Shawl here maintained that this evidence of Abdul Gani Atash was material in this case.

He further stated that other alleged documents also show the connection of Sajjawal Khan with Parwana's father and brother. Parwana in his cross-examination also stated that Abdul Gani Atash had contacts with Pakistan and he used to receive the amount. He thus was a material evidence to show that what was going on between Parwana and somebody else. The law requires the corroboration of facts that were alleged and the evidence of Dar and Atash would have given that corroboration. Prosecution did not produce these two as witnesses and thus the conclusion was that whatever Parwana stated was a lie asserted Mr. Shawl.

Parwana alleged that in June 1957 Gulam Ganai and Sidiq Sheikh came to him with bombs. When he came to his home he told Atash that these two persons came from Kangan. He read from the statement of Parwana to elaborate this fact. He asked the court to note the fact that this very Gulam Ganai had earlier given Atash Rs. 5000/-. This was a contradiction in itself asserted Mr. Shawl and further said that Atash alone could be a material evidence so far as this allegation was concerned.

Commenting on this point Mr. Shawl stated that these two persons knew (i) That Parwana had absconded; (ii) That Atash was responsible for Parwana's going to Pakistan; (iii) That money was brought and; (iv) That they had contacts with Pakistan and thus they should have been brought as witnesses and in absence of that the inference was that Sec. 114 illustration G went against the prosecution. He cited case law on this point where it was held that

of Evidence Act

when material evidence though available was not produced the trial could not be fair. Mr. Shawl remarked that this inference was against the prosecution and the evidence (this PW became doubtful and worthless.

Arguing further Mr. Shawl stated that this Abdul Aziz Parwana was actually Abdul Aziz Dar as deposed by Head Master Pt. Dina Nath of the National High School PW 81.

Court: This Parwana is just a pen name.

Mr. Shawl: What was the necessity of having introduced Parwana when the record shows his name as Abdul Aziz Dar. Prosecution did it only to bring it in consonance with alleged ten documents addressed by Sajawal Khan to Parwana. This was borne out by documents produced in this court.

Arguing further he said that this Abdul Aziz Parwana was doing the work entrusted to him by Political Conference. This was clearly shown by the documents and Parwana's evidence in this Court. This all eliminates Plebiscite Front from his activities. He asserted that in these cases he was just an addendum- an after thought. Parwana had no dealings with the Plebiscite Front, its members, and with Mr. Shawl himself. Parwana states that he preserved some letters with the idea to show to Pak at the proper time that he was working for Pakistan. Thus Mr. Shawl asked how could he be punished for the sins of another who was working for Pakistan and not for him. Mr. Shawl argued that since 1955 Parwana was preserving these letters to show to Pakistan that he was working for her in Kashmir. There was not a single letter to him which was from Plebiscite Front and which had any remote connection with Plebiscite Front. This was borne out by his own statement here in the court. In these documents there was no reference to Plebiscite Front and absolutely no reference to Sheikh Sahib or his party. The prosecution alleged that it was seditious to say Sheri Kashmir Zindabad and this was inferred by Mr. Pathak in his arguments.

Court: Has he termed it as sedition.

Mr. Shawl: He interpreted that Sheri Kashmir Zindabad meant to restore him into power. However in these cuttings there was no such mention although Pak Zindabad was mentioned. That according to the prosecution was not seditious affirmed Mr. Shawl.

He further said that prosecution was building up a case since 1953 and every document mentioning Sher-i-Kashmir Zindabad and Rai Shumari Zindabad was in spite of the fact whether it had any connection with the Plebiscite Front. He asserted that this Parwana was a Spy of the CIA and in the posters recovered from him no mention of Plebiscite Front was made. This man according to his own statement had connections with Political Conference and the alleged cuttings and posters were of that organisation. He asked how under these circumstances Plebiscite Front or the accused (Mr. Shawl) was held responsible for the faults of some other persons or organisation.

Arguing further he said that another fact was that Parwana was acting under Sajawal Khan and that he gave him the directions about the explosions etc. and was advised to consult the Political Conference. He asked how could that mean Plebiscite Front or its President or its any worker had any connection with him. He referred to Exp. 2/10 and the examination in chief of this PW on this point to substantiate his arguments that all his dealings were with the Political Conference Organisation. Parwana consulted as was alleged Begum Karra and Abdul Hamid Karra brother of Ghulam Mohiuddin Karra for his alleged activities regarding bombs and explosives and got help from Political Conference. Mr. Shawl stated that in Bomb Case out of the 9 accused he was the only person from Plebiscite Front. 5 were from the Political Conference whose description Parwana gave in the cross-examination. Alleged bombs were brought by him in the Political Conference meeting in order to get advice about these from these workers. Mr. Shawl asserted that it was strange to connect him (Mr. Shawl) with the activities when he according to Parwana's evidence did neither feature in

there nor came into picture at anytime. He termed it as personal vendetta of Prosecution against him.

AFTER THE BREAK

Continuing his arguments on the association of Parwana with Political Conference Mr. Shawl said that this PW alleged that he asked Sajawal Khan to send something to Kashmir. He referred to Exp. W2/18 and his examination-in-chief to substantiate his argument. He Parwana had the instructions to contact political Conference workers and his connection was established by this very fact with Political Conference and not with the accused or the Plebiscite Front affirmed Mr. Shawl. He affirmed that were his story believed in spite of Parwana character, conduct and suspicious nature by which his statement was recorded even then it would abundantly be clear that he was connected with the Political Conference and not with the accused or Plebiscite Front. Whatever he did was so moto and this also was borne out by his own statement. He went to Pakistan on his own accord. Nobody asked him to go to Pakistan and do any work. Mr. Shawl asserted that Record even did not show that he was ever engaged by the accused or the Plebiscite Front. His purpose at first of going to Pakistan was not political. His 2, 3, and 4th trip were not also at the instance of the accused or Plebiscite Front as he himself admits in his statement. Thus to connect Plebiscite Front or the accused with his activities was nothing but male fide remarked Mr. Shawl.

Mr. Shawl quoted from the deposition of Parwana to substantiate that Parwana was asked by some one else to do the alleged sabotage. It was Sajawal Khan as deposed by Parwana and not the accused and Plebiscite Front. This completely exonerated the accused from any connection with this crime. Alleged Bombs were brought by Ghulam Ganai and according to the evidence of Parwana itself this Ghulam Ganai never brought anything to the accused or the Plebiscite Front. Ghulam Ganai asks this Parwana to remain prepared for receiving bombs and alleged bombs were received by Parwana and not by the accused or the Plebiscite Front. Parwana agreed to do the job and thus by his own saying he belied the Prosecution story that the accused or Plebiscite Front had to do anything with these allegations. Thus the whole story was false and needed outright rejection affirmed Mr. Shawl.

Parwana took the lead after consulting Political Conference for this alleged activity of explosives etc., explained Mr. Shawl after quoting from the depositions of this witness. When Ghulam Ganai came he did not consult the accused and Plebiscite Front. He did not mention anything even in the statement under section 161 and before Mr. Matoo that the accused (Mr. Shawl) wrote to Sajawal Khan. He told this new thing here because he was tutored to do so with the purpose to involve the accused (Mr. Shawl) in this case as well. Mr. Shawl explaining it further stated that were this correct then Ghulam Ganai should have come to the accused (Mr. Shawl) and not to the Parwana with the reply of the letter. The story of Prosecution was fabricated which stands smashed by the cross examination affirmed /

Arguing further he said that Prosecution built too much on the letter send by Sajawal Khan. From this letter the logical inference was that the scribe had to meet Sajawal Khan to remove the misunderstanding. Parwana contends that it meant to explode a bomb near the Palladium. Parwana had mentioned in his letter Secretariat, Hind Kashmir Hotel, Palladium and other places. Mr. Shawl asked how then this reply would mean that the bomb should be exploded at Palladium. Parwana explained the misunderstanding referred to in this letter about embezzlement of 3000 rupees and Mr. Shawl asked how in view of that explanation it could be told to mean to explode a bomb. Mr. Shawl asserted that according to this very letter; its explanation by Parwana and other circumstantial evidence the whole story built by Prosecution falls to the ground and it stood fully proved that Plebiscite Front or the accused had nothing to do with this letter; money, bombs and explosion. Explaining further he asked when money was meant for someone else, embezzlement was made by some other person, directions were sought from a different source and help and was asked from some other organisation then how could this be believed that the accused or the Plebiscite Front had any connection direct or indirect with all this. He asserted that Parwana and his evidence it responsible of this all. According to Parwana and his evidence it was some other organisation and agency for which he was working and to connect the accused (Mr. Shawl) and the Plebiscite Front with all

4
this was a blackest, malacious, fantastic and absurd lie and also a common sense, maintained Mr. Shawl.

Mr. Shawl further arguing stated that in an alleged letter Sajjawal Khan writes to the addressee that Parwana was his (Sajjawal Khan's) man. This contradicts itself the false story of Parwana, he had any connection with the accused (Mr. Shawl) because then no introduction would have been necessary. Mr. Shawl asserted that Parwana's evidence was of vacillating character and it varied from time to time, in police, in Special Judge's court at Srinagar and this court at Jammj because Parwana was under the great influence of the prosecution and had to state what suited the prosecution from time to time.

Further elucidating he said that this P.W. often and qualified his statement and it clearly showed that he was a tutored witness and continuously under great influence of police and the prosecution. He maintained that such evidence should have been rejected at the very outset. He asserted that neither have bombs were brought or recovered nor were there any explosions alleged wise this incriminating material would not have been destroyed or maintained by the prosecution. Mr. Shawl asked could this cock and bull story be believed by anyone who had even a little common sense in him.

The evidence of these accomplices approvers was thus fabricated. They were telling lies and the accused or the Plebiscite Front had nothing to do direct or indirect with them.

Mr. Shawl stated that this Parwana since 14th July 1957 when he was arrested confessed before the police and in spite of that it was not produced before the magistrate for recording his confession for 12 days. That also made his story a fabricated one and doubtful in the eyes of law, remarked Mr. Shawl.

Mr. Shawl then referred to that part of the prosecution story in which something was related about Mr. Shawl's person. He asserted that this was perjury and fabrication and had no basis whatsoever. He referred to Exp. EA/20 and Exp. PEA/21. He submitted that these documents were before the court of law where these had been produced by the prosecution on Oct. 10, 1957. The documents were pending decision by a court of law. He maintained that however severe the Enemy Agents Ordinance was, the court of Special Judge was a court of law. When a document was before a court of law pending decision then under no law could another court adjudicate upon it, because the matter was subjudice. He stated that this was objectionable under law and by this method prosecution wanted to get a legal opinion against the accused (Mr. Shawl) from this court because it had failed to establish any contact between him (Mr. Shawl) and Pakistan.

Further elucidating it he said that ^{and} he was the President of the Plebiscite Front for ten months when continuously four of its Presidents were imprisoned just after short intervals and still Government could not curb the urge to achieve self-determination for the people. These fabricated cases were launched against the leaders and workers of the Plebiscite Front organisation. He asserted that as a member of the Plebiscite Front he could not affiliate with any country or Pakistan because they were wedded to the programme of solving accession by plebiscite. Prosecution manoeuvred by instituting these cases to prove their association with Pakistan and thus when they did not succeed in ^{silencing} the freedom urge they manufactured these bogus cases otherwise there was not one line or letter which could be shown was written by him or other accused to Pakistan.

Referring to Sec. 15 of the Enemy Agents Ordinance he asserted that in view of the clear instructions of this section this record could not be brought to this court. This showed how prosecution was tabooed to get the record of that case here. The general law prohibited the use of any document before it was decided and this special law of Enemy Agents Ordinance prohibits its disclosure even and thus it could not be used here against him asserted Mr. Shawl.

Referring to the documents produced by the prosecution from the record of the Bomb Case he stated that this court has ordered prosecution to produce certified copies of all those documents. Mr. Shawl submitted if this was done then his apprehension was that the originals would not remain before the court and the court would not be able to assess the interpolations and material alterations which were in different ink, pen and hand in the original document.

He referred to Exp. EA/21 to prove his plea and stated that if this was done his defence would suffer largely and a great prejudice would be caused to him.

The court rose for the day.

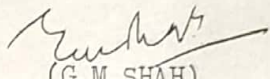
.....

ISSUED BY
THE ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE

Copy forwarded to _____

for perusal and favour of publication. This is substance of full argument.

Jammu.
15th June, 1961.


(G.M. SHAH)
Counsel and Secretary,
J and K Legal Defence Committee.

}-----{
}-----{

PLEASE READ OUR PUBLICATIONS ON
THE
KASHMIR CONSPIRACY CASE

Which

can be had from:

1. Central Office, Shaheedgunj, Srinagar,
Kashmir. -Phone. 707.
2. Branch Office, The Dawn, Canal Road,
Jammu. Phone-5133.
3. Branch Office, 81/48 Diplomatic Enclave,
New Delhi-21. Phone- 32202.

))))-----((((

Grams.....INSAF.
ALL JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ....SRINAGAR
K A S H M I R

Telephone:- 707.
1. Srinagar: 5133.
2. Jammu: 16th June, 1961.
3. New Delhi: 32202.

Branches:-
1. The Dawn, Canal Road, Jammu.
2. 81/48 Diplomatic Enclave, New Delhi. 21.

THE KASHMIR CONSPIRACY CASE
Resume of Mr. Mohi-u-Din Shawl's argument.
4th day.

Resuming his arguments about incredibility of Abdul Aziz Parwana's evidence Mr. Shawl stated that provisions of Enemy Agents Ordinance did not allow any court to use the record of Srinagar Special Judge's court. He referred to Sec. 15 and 17 of the Enemy Agents Ordinance. Former relates to the documents and other material on record and the latter to depositions in the court of the Special Judge. Sec. 15 prohibits even to furnish any record or document to any person except the accused or his counsel. No court could ask for the record of this Special Judge. Nowhere was it provided that Government by notification could do or undo mandatory provisions of this section, asserted Mr. Shawl.

Discussing this further he said that Sec. 17 did not in any way limit provisions of sec. 15. It only related to the disclosure or publication for which Government orders were to be obtained essentially. This could be regarding publicity and propaganda to enable a press correspondent or a reporter to publish the proceedings. Even they could not use the documents or their parts as was provided by Sec. 15. Only the statement of the prosecution witness could be published under this section. It was thus obvious that nobody could have any copy of that record and what was done here was against law. This Ordinance in effect superseded the provisions of the Criminal Procedure Code thus this court could not use the record of State versus Rehman Shagoo Case. Whatever was done was a nullity and could not be used against the accused asserted Mr. Shawl.

Referring to the Government Notification he stated that this was issued on 13th May 1959. It authorised certain persons in the Bomb Case to depose in the Conspiracy Case and it did not authorise the production of record or documents. It was in October, 1957 when ~~in Bomb~~ Case Abdul Aziz Parwana came in as a witness that numerous press correspondents attended the proceedings. Time without number his deposition was broadcast and published in almost all Indian languages. When the time of cross examination came these correspondents were conspicuous by their absence and they were forbidden even entry in the court room. That was the meaning of Sec. 17 asserted Mr. Shawl. It was for some ulterior purpose that the section provided that some one may publish or disclose certain things. It was silent about using record or documents by any court.

Arguing further he stated that another defect of using the record here in the Conspiracy Case was that in 1958 the accused had submitted a petition to the Supreme Court of India after the judgment was delivered by the High Court and in their petition to the Supreme Court accused challenged the legality, competency and constitutionality of this Ordinance. A temporary stay order in May 1958 was received. At that time it appeared that this Ordinance could not stand before the Supreme Court of India. Even responsible persons stated that time that as this Ordinance could not stand a new case might be instituted. Mr. Shawl asserted that in spite of this fact documents, depositions and the record used under this Ordinance could in no case be used by any other court when this petition was before the Supreme Court and when the Supreme Court had passed its stay order.

contd. on page 2.
.....

On the contrary the record was produced in this court before Supreme Court of India delivered any decision on the petition of the accused Mr. Amin reader of Additional District Magistrate and PW was in the case examined in April 15, 1959 in this court and even at this time Supreme Court had not delivered its judgement. Thus Mohd. Amin could not produce the record of the Bomb Case in the court. This PW himself stated that there was no government sanction to produce this record. Notification could not legalise the illegality done in this case at this time. Prosecution thus manoeuvred to disobey the stay order of the highest court of the land. Notification of May 13, 1959 could not and did not authorise Mohd. Amin to produce the record of the Bomb Case here in this court. Hence whatever was done pertaining to that record or documents had no validity in law and could not be used against the accused asserted Mr. Shawl. This disability was still continuing because Ordinance was yet in force and no court was stronger than the Court of Special Judge court at Srinagar could use the record of State v/s Rehman Shagoo Case. State Govt. also could not issue notification in presence of the stay order of the Supreme Court. Under these circumstances summoning, production, use and exhibiting of the record and statements of PW in this case was all unwarranted by law.

Assuming for a while that Sec. 17 authorised the prosecution to use the record the notification should then have been previous to the date when the record was produced in this court. Mr. Amin instead makes disclosure in April and hence the action was illegal and unwarranted.

Court: What do you mean by disclosure.

Mr. Shawl: Quoting from Mr. Amin's statement he stated that what he disclosed pertaining the case was against law. No information could be given about the deposition of PW's and contents or particulars of various documents.

Court: When a person discloses a certain fact in spite of this ordinance would that mean that it was illegal.

Mr. Shawl: The Accused had to safeguard his interest. The action of Mr. Amin was not authorised by law to depose here and what was disclosed could not be used against accused. If Mohd. Amin, Parwana and Matru contrived the provisions of law this court should not have allowed them to do so because all this was illegal and against clear provisions of this ordinance. Whatever might be the case the best would go to the accused asserted Mr. Shawl. He further said that this record could not thus be used and should not be used against the accused.

Referring to Seizure memo Exp. EA/19 Mr. Shawl stated that it was PW 135 Pt. Jaggernath Assistant Inspector who had prepared it. He was connected with the search and arrest of Abdul Aziz Parwana. He allowed to be attached to Sheikh Ghulam Qadir. In his cross-examination this PW state that the room where from alleged documents and the explosive material was seized was not mentioned in the seizure list to be in exclusive possession of Parwana. Thus it could not be said that whatever was recovered from Ahmad's House was recovered from Parwana asserted Mr. Shawl. His trunks were not seized as stated by this PW here. This trunk was locked and the PW stated that it was opened by Parwana but it was not known wherefrom the key was got. Mr. Shawl requested the Court to note that Parwana was under arrest at this time and thus suspicious was cast on this affair of search. The sitting place was also searched which according to this PW was used by all the members of the family. Seized list was not prepared in the room of Parwana but in the courtyard and as witnesses to sign the seizure memo. This investigation officer acted in a very doubtful and peculiar manner quite forgetting to add that procedure that was laid in criminal procedure code. Instead of four witnesses as Qadir Malik, Pyare Lal, Yahab Shah and Amir Jeet Singh were asked to attend the occurrence.

Revealing their antecedents Mr. Shawl said that Parwana was a peon in forest department. He had to attend Divisional Forest Officer's office from 10 A.M. to 4 P.M. nearly 1 mile away from Parwana's house. Referring to section 103 Cr.P.C. he stated that it was necessary to call some respectable citizen of that locality to attest an account

Chaprasai could not be a respectable citizen.

Another was Pir Mohammed Yahya Sidiqi M.L.A. He was a member of the ruling party. He was not the resident of Amirakadal or Maharaj-bazaar and much less of Solina payeen.

Pyare Lal Karihaloo was Secretary of State Central Labour Union and a member of the ruling party and was not the resident of that locality and was not even residing within the radius of 2 miles of that locality.

The fourth was omnipresent witness Amar jeet Singh who was always conspicuous when something illegal was to be done by police. He was present always whether in Sheikh Ghulam Qadir's Office, on a search, at arrest or at any other places. He was also a member of the ruling party. Karihaloo and Pir Yahya were bosses of Parwana. All the four witnesses were connected with the ruling party. The Investigating Officer had contravened the provisions of law and besides the whole evidence was tainted and had no legal value.

AFTER THE BREAK

Continuing his arguments after the break Mr. Shawl referred to Govt. Notification of 13th May, 1959 again and stated that he was fortified by this fact also that this notification authorised only some persons to depose. Annexure A stated that only those persons could disclose who were Prosecution witnesses and annexure B mentioned that FIR 100 dated 19-6-1957 and FIR 53 dated 28-6-1957 could be produced in the other court. Thus notification could not be under section 15. He asserted that u/s 17 these PWs could not produce the record here. Thus it became clear that documents or record of that case could not be used here and what was done was illegal according to the provisions of this ordinance.

Referring back to seizure list Exp.EA/17 Mr. Shawl stated that the material that was seized was of importance in this case. It was important to preserve the explosives seized from the house of Ahmad Dar, in order to connect Abdul Aziz Parwana with the material. He asserted that it proved that no explosive material was at all seized and thus prosecution story was false.

Documents that were seized were not attested by Independent witnesses of this locality-Solina- and thus whatever was done was done somewhere else and not in the house of Ahmad Dar. That made the investigation more doubtful and therefore the benefit should go to the accused, affirmed Mr. Shawl.

Mr. Shawl quoted from PW 135 examination that "an expert was called from Delhi by Superintendent of Police, CIA and this was destroyed.....! It was done before confession of Parwana.....! It was not sealed by the police."

Commenting on this Mr. Shawl stated that that was not the legal way of seizing, sealing and destroying and Police could not do all this so moto. It revealed that the case was a cooked up story and all allegations of recovery of explosive and letters were false.

Referring to documents allegedly seized from the house of Dar he stated that some letters were allegedly to be for him (Mr. Shawl). He further stated that according to seizure list all the ten letters were addressed to Parwana and thus Prosecution was under law stopped to say that anyone was meant for him (Mr. Shawl). It states that ten letters had 5 envelopes. Letters addressed to Parwana have been accepted by Parwana to be solely for him and thus Prosecution could not tie up the accused (Mr. Shawl) with them. One letter that was addressed to Majid was accepted by Parwana to be for him (Parwana). One addressee to Jeelani Boot House was also for Parwana as explained by Parwana in his statement. So all the envelopes were in the name of Parwana and were for Parwana. He stated that every letter from Sajawal Khan used to have an envelope. The envelopes according to Parwana would always bear names of those whom those were addressed and thus it could not be alleged that any letter amongst these were for him.

Further explaining it he stated that every letter used to come in an envelope and would bear the name and designation of the addressee. He stated that two letters alleged to be for him (Mr. Shawl) were received by Parwana from Ghulam Ganai on July 9, i.e. 3 or 4 days before Parwana's arrest.

4. Their envelopes were missing. He requested the court to note that the letters alleged to have been received by Parwana two years back had been preserved by him along with the envelopes but that was not done when these two letters were received. That was clear contradiction and a cooked up and unbelievable story asserted Mr. Shawl. Mr. Shawl asked where then went the envelopes when Parwana stated that they were opened at his house search. Elucidating further he said that Parwana at places told that these were opened two or three days before. This was clear contradiction and this story could not be believed, affirmed Mr. Shawl. It clearly becomes obvious that these two letters were not even in existence thus whole story that these outright fabrication. Mr. Shawl asserted that all this investigation seizure, existence of the letters and the prosecution tale was doubtful and suspicious.

Arguing further he said that under section 161 Cr.P.C Parwana gave a statement in the police. Prosecution alleged that two letters Exp. EA /21 and its annexure Exp. EA/20 were received simultaneously by Parwana. But in the statement u/s 161 Cr.P.C Parwana stated that the first letter reached him in July 1956. Mr. Shawl informed the court that he was not the President of the Plebiscite Front at that time. And second letter came to him on 30th May 1957. This was what he revealed in the Bomb Case even but here he gave another version and stated that they were received together. In the cross-examination of here this prosecution witness stated that the statement he gave to police was similar to what he deposed in this court. When he was asked to clarify his contradictions he stated that whatever he said here was correct and he did not know what the police had actually written. Reading over from his examination Mr. Shawl showed that Parwana had changed and improved upon his statement he had given in the court of the Special Judge Srinagar. Mr. Shawl maintained that such evidence had no value before law. He further stated that if the letter meant for him (Mr. Shawl) was kept by Parwana then the contact was not established and the story that he (Mr. Shawl) contacted him in June tumbles down because as alleged Parwana was directed to contact him (Mr. Shawl). Mr. Shawl asked here how could he have met Parwana in Majestic Hotel in the month of June when he had brought bombs, when there was no kind of previous contact direct or indirect with Parwana and which fact was evident from his deposition itself. Failing there the prosecution had come now with this latest position that the letter reached Parwana 3 days before his arrest showed fully vacillation and the contradiction of the prosecution and its benefit would also go to the accused asserted Mr. Shawl. He remarked that prosecution stories were thus exposed and could not stand the test of cross-examination.

Explaining further Mr. Shawl stated that Parwana told this court in contradiction of his statement that he had not told police that these letters had been received one month and a half back. He not even know that these letters were seized from him and the police barefacedly told that these were recovered from Parwana. Mr. Shawl affirmed that this again was a pure and simple contradiction and meant to please the prosecution.

Commenting on this story of the prosecution that 'Mohatarim Asalam-alaikum' meant Mohiudin the accused, he stated this was fantastic inference more so when no code name was used against (Mr. Shawl's) name. In addition to that this very person Parwana said that he did not know whether it was meant for Mohiudin the accused or somebody else. That would mean whether Sajjawal Khan addressed Mohiudin the accused or somebody else and thus the contradiction proved that the whole story was false.

Referring to both the letters Mr. Shawl stated that these were undated and unsigned and there was no mention about the place of origin. Exp. W 2/15 gave no code and stated in clear terms the names of the Plebiscite Front and its President.

contd on page 5.

In second letter it was alleged that Karim Rather and Bada Lalla and Niaza were code names. Mr. Shawl affirmed that this all showed that these were not written by the same person or agency. It was material to note Parwana's statement that he did not know whether these were for him (Mr. Shawl). Thus these two letters were fabricated.

He again requested the court to keep original record here and not certified copies because latter did not show interpolation and over-writings. Material alterations had taken place at least in letter No. 1. and that had changed the whole sense and purpose of the letter. He referred to Sarkar's commentary on Evidence Act Edition 10 page 846 stating that material alterations made a whole deed void. This was adopted in many Indian cases. This material alteration was held to precluded it to be used for a legal effect. This principle invalidated such documents against the accused. Assuming though denying the existence of these letters he asserted that this alteration invalidated these documents. The original wording was that the contact should be established with him and the interpolation was that the contact should be continued. This interpolation was in different hand, ink and pen. The verb was also to suit the interpolation. He affirmed that this material change made it obvious that the documents were fabricated and were thus ineffective and against law and could not be used against the accused.

Summing up he stated that this letter had no envelope and it was not addressed to him. Referring to the question of code names he stated that he never used any code name and was never addressed by a code name. He remarked that it was fantastic to call "Muhtarum" as a code name as it would be fantastic to call "Shri" as a code name. Muhtarim, a form of respectful address and Aslamalaikum, Muslim form of greeting could not be code names. He termed it as ignorance of Urdu language to ascribe such a meaning to these two words. He asserted that he had no dealing direct or indirect with any person beyond Cease-Fire Line and affirmed that the evidence of Parwana and its inherent contradictions itself shattered the prosecution story. He stressed that he had no dealings whatsoever with this Parwana. He maintained that Parwana was exposed fully by the cross examination and his various contradictory statements in Police, before Special Judges court and here in this Court.

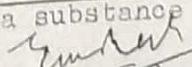
Mr. Shawl discussing further the incredibility of Parwana's evidence stated that this Parwana as alleged was in contact for the last two years with Begum Karra and Political Conference. In spite of this alleged close contact he embezzled Rs 3,000/- from the amount of Rs 5,000/- that was alleged to have been sent from Sajawal Khan for Begum Karra through this man. Here Mr. Shawl asked how could it be believed that he would have delivered the alleged sum of Rs 7,000/- to him (Mr. Shawl) in full when Parwana had neither any previous contact with him nor knew him, nor met him anywhere. Mr. Shawl termed this as a bundle of lies which stands shattered by the very depositions of this 'pampered child of prosecution!

Further Mr. Shawl said that Parwana according to his own sayings never went to the office, home or at any other place of the accused (Shawl). Thus the alleged contact was fabrication and any contact with Parwana regarding explosives etc. was also false. He asserted that he and his organisation and other accused had no contact with him, Sajawal Khan or with Pakistan. He completely disassociated himself and other accused from the alleged explosions that took place in Srinagar or elsewhere and also with the documents that were allegedly seized at Ahmad Dar's house.

(The Court rose for the day)

ISSUED BY
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

Copy forwarded to the _____
for perusal and publication. This is a substance of the
full argument.


(G.M. SHAH)
SECRETARY AND COUNSEL.

Telephone:
Srinagar: 707.
Jammu: 5133.
New Delhi. 32202.

17th June, 1961.

Branches:
1. The down, Canal Road,
Jammu.
2. 81/48 Diplomatic
Enclave, New Delhi.

The Kashmir Conspiracy Case
Resume of Mr. Mohi-u-Din Shawl's argument.
(5th.....day)

Resuming his argument today Mr. Shawl discussed the conduct of Parwana before his arrest. Parwana's conduct was all doubtful and suspicious and could not be believed whatever he deposed here maintained Mr. Shawl. To substantiate this he explained how Parwana acted after explosions that took place in Srinagar. Parwana admitted in his examination that before his arrest three days back 29th July Gulam Ganai came to him. On 29th June Parwana had asked Gulam Ganai and Sidda Sheikh to go back because explosions had taken place. The matter should have finished there asserted Mr. Shawl but Parwana stated that still one bomb was in his box which was recovered by the police. Mr. Shawl asked if it were a fact that he was entrusted with the explosion the natural conclusion would have been that he would have returned the bomb back to Gulam Ganai and common sense demand more cautious and carefulness on the part of Parwana. Parwana did not relate anything about it to police or any Govt. officer or any member of the Plebiscite Front but to some other person and thus the natural conclusion was that the accused had nothing to do with these explosions or recovery of any explosive material from Parwana's house asserted Mr. Shawl.

After some time Parwana met Sher Abdul Aziz an accused in Bomb Case after this occurrence who told him that Abdul Rehman Shagoo was arrested. Mr. Shawl remarked that now the natural conduct of Parwana would have been different to what he showed after the explosion had taken place. He according to his statement kept a bomb in his box even after the arrest of Mr. Abdul Rehman Shagoo his alleged companion and this was most unnatural conduct and unbelievable, remarked Mr. Shawl. This recklessness on his part could not be also believed in view of the fact that Parwana had got the alleged certificate of intelligence and cleverness from Sajawal Khan and Mr. Shawl asked how it could be believed that he would have preserved this bomb. The subsequent behaviour and conduct contradicts the assertion and thus the story was not true and was unbelievable. Knowing that his colleague was arrested in a case where punishment was much heavier the conduct and behaviour would not have been so as Parwana adopted after his occurrence. This clearly shows that neither he took any part with explosions nor did he preserve any bomb nor was he connected with any individual or party as alleged by him. The whole story was fabricated and deserved outright rejection affirmed Mr. Shawl. He further stated that Parwana was a man of low status, connected with National Conference and he was not connected in any way with Plebiscite Front and thus his statement was unbelievable and false. He termed his deposition as an iceberg which melted away when it reached the tropical heat of the court at the cross-examination stage.

The main structure had tumbled down and all the efforts of the prosecution to maintain the myth also met the same fate asserted Mr. Shawl. Summing up he stated that corroboration should be such as would connect the accused with the guilt and asked how the accused were concerned with a member of the National Conference did 24 hours in a day. He asserted that the corroboration put forth by the prosecution was frivolous and the Special Staff was the fabricating agency in Kashmir equipped fully with stock witnesses who were engaged and tutored by them for use as witnesses in such cases. They were also so trained in perjury and it was difficult for any member of the Bar even to find out the truth.

Discussing the merit of the evidence of one of the stock witnesses of the police he referred to Rehman Malik PW. 155 and stated that during the examination of such like witnesses who were common witnesses in both cases one came across to so many orders passed by the court asking the accused to stop the cross examination because there were many an interruptions from the prosecution side. Whenever such a witness deposed something in the favour of the accused, PW was alerted because being faced towards the court he could not see the features of the prosecution. In spite of the endeavour of the prosecution Mr. Shawl affirmed that these statements from alpha to omega reveal that

these were perjured.

This Malik 155 deposed in the court of Special Judge Srinagar that he knew the accused 'Mr. Shawl' when he and Mr. Shawl were volunteers in the Muslim Conference in Mujahid Manzil and also when there was martial law in Silk Factory. Mr. Shawl remarked that latter had occurred in the time of the Maharaja Pratap Singh and that time he (Mr. Shawl) was not even born. He termed it as an outright lie. Moreover this PW was an employee of the Silk Factory and was a member of the State Labour Union which was the branch of the Ruling Party's National Conference which he admitted himself in his statement in this court. This member was thus a paid worker of the National Conference and was thus bound to obey the orders of the National Conference asserted Mr. Shawl. He admitted that on Friday he went to Hazratbal to attend the National Conference meeting and this was also admitted by Pir Ghulam Hassan Gillani PW 139 in his statement in this court. That made this Malik a partisan witness and according to law it had no value asserted Mr. Shawl especially when the accused belonged to a different organisation and when the case was of sedition.

Discussing the contradictions in the evidence of this PW Mr. Shawl stated that this PW had seen him in the Majestic Hotel with Abdul Aziz Parwana and he himself was not a regular customer and used to go occasionally there as admitted by him in his Examination. Having given this version at one time this very witness deposed at other place that he used to go often to the Hotels for taking tea. Mr. Shawl remarked that it was obvious that he was a professional witness and tutored agent of the Police. Mr. Shawl asserted that he never knew Mr. Parwana or this witness and had no direct or indirect contact with them. He was wedded to peaceful solution of Kashmir and thus use of violence was foreign to him and other accused.

This PW stated that after leaving Silk Factory he used to go to his house and the inference was that he would naturally take a cup of tea as he neither was a homeless person nor a frequent visitor of Hotels and his going to Hotel for taking tea at a distance of 1½ miles and not to his own nearby home would be unnatural. But improving on it this P.W. stated that he used to go to Hotel often and thus contradiction was apparent in same hot and cold breath of this witness. Therefore his story that he saw him (Mr. Shawl) and Parwana together in Majestic Hotel was nothing but a fabricated one. Then his memory was tested - he only deposed that he did not see anyone else there but the accused and Parwana. This was preposterous remarked Mr. Shawl, and could not be believed because Hotels being Public places were always occupied by people. This witness stated also that he saw the accused (Mr. Shawl) in the court after becoming the President of the Plebiscite Front. He asked what his business was to be in a court of law when according to his own version he neither was an accused nor a witness. This whole showed that he was a tutored witness.

Attacking his veracity he further stated that this witness deposed here that he had never gone or appeared before Sheikh Ghulam Qadir Superintendent of Police C.I.A. but actually he had made a statement u/section 161 before this very Superintendent of Police C.I.A.

Showing his bad character Mr. Shawl stated that this witness was a resident of Dobji a notorious place for immoral traffic. When asked whether he was sometimes tried for such an offence he did not deny this fact on cross examination but stated that he was not challaned and thus it showed that he was pimp under Police protection. Mr. Shawl remarked that they help Police in certain odd jobs to depose against those persons who were involved in faked cases. This P.W. was conscious of this fact and thus denied that he ever went before Police or any court in spite of the fact that he appeared before Special Staff, Thana Sader, in the court of Special Judge Srinagar and here in this case.

This behaviour and conduct of the PW was the result of his guilty conscience asserted Mr. Shawl and thus this witness was unworthy of credit. Mr. Shawl asked what to believe - Police or this witness. He affirmed that both were false and this

evidence was prejudured. The natural inference was that he must have been brought here as he was a paid agent. He added that this PW contradicted his statement as soon as he felt at cross-examination that his deposition might favour the accused. This showed that he was a professional witness and besides that he was a procurer and pimp and thus under direct influence of Police.

He had deposed in the court of Special Judge that he knew the accused from the time of Martial Law in Silk Factory which took place in Maharaja Pratap Singh's time. Here in this court he did not remember this statement but one thing he remembered that on a particular date and time he knew that the accused met somebody somewhere. That was a fantastic lie asserted Mr. Shawl, and it showed that he deposed what the police taught him and thus his statement could neither be believed nor had any value. In fact such evidence made the prosecution story a cock and bull story beyond any kind of doubt which was unworthy of credit and belief asserted Mr. Shawl.

AFTER THE BREAK

After Break Mr. Shawl discussing the credibility of the evidence of Mr. T.N. Matoo Special Judge Bomb Case stated that he had raised an objection in his written statement about his competence to try him (Mr. Shawl) in Bomb Case and to appear here as a Prosecution witness. Elicudiating it he said that there were two things about Mr. Matoo that he was a PW against all the accused and that he was a Special Judge trying Mr. Shawl in the Bomb Case. The senior Counsel for the prosecution had tried in his argument that that position was perfectly all / under law and could be formal witness. Mr. Shawl submitted that Mr. Matoo was not a formal PW. In his examination-in-chief he stated that he recorded the statements of approvers e. g. Attaullah Beg and Zamman Parrey. These approvers had appeared as PW in this case and their statements u/s 164 were recorded by Mr. Matoo. The objection of the accused to this procedure adopted by the Prosecution was on record. Mr. Matoo had recorded their statements and they were PWs against the accused. He also had recorded the statement of one of the accused in the dock. He appeared and deposed about the house search of Sheikh Sahib chief accused in this case and at this house search things unwarranted by law happened! He asked could even then be claimed that he was a formal witness. Some explosive material was destroyed under his orders. Thus he had permitted the Prosecution to destroy the alleged piece of evidence which was unwarranted by law. About FIR 100 1957 which formed the basis of the Prosecution here this witness admitted that he had read it and it was showed to him and thus witness who helped the Prosecution in so many ways and did odd jobs for them could not be a formal witness asserted again Mr. Shawl. His evidence was material evidence though as a partisan that was unworthy of credit.

He had contravened express provisions of law while (1) recording statement under section 164. (2) giving remands (3) attending house searches (4) issuing orders of the Prosecution application of CIA and (5) Destroying material evidence. He was thus no better than a partisan witness. He was simply a Police magistrate who did not care for provisions of law, fairplay and justice. He was always keen to lend support to prosecution case. It was not the office of Mr. Matoo that had done so much mischief but his person alone. He as a Judge tried the accused in Bomb Case whose material evidence and record were analogous to this case and thus it was basically against all canons of law and tenets of Jurisprudence to produce him as a witness here. Thus argued Mr. Shawl.

Explaining further he said that the complaint was lodged on 9th October 1957 in Bomb Case. On the next day Abdul Aziz Parwana statement was recorded by Mr. Matoo. Mr. Shawl asked how it was possible for a person like Mr. Matoo to hold balance of justice even when he did so much for prosecution. How could he be a fair judge while trying him in that case asked Mr. Shawl. During investigation of FIR of 100 the prosecution alleges that this conspiracy case and other allied cases like Bomb Case etc. came to light.

This magistrate tried accused in that Bomb case and as ADM he did other odd jobs for the prosecution. Thus he could not be a fair and just judge in that case. This serious matter requires the protection of law and guarantee of the Constitution and the assistance of justice asserted Mr. Shawl. Mr. Shawl challenged the dual role of prosecution witness and stated that he acted as a judge and also came as a prosecution witness against the same person. He could not be a formal witness. The serious objection was that he helped the CIA and the prosecution in some ways not under the procedure of the Cr. P.C. but under his whims, caprice and partisanship. The principle that out of 100 if only one was found innocent should be acquitted should always be kept in view maintained Mr. Shawl. He added that judge was under the direct influence of the police. He was present at Hazratbal and there too he did not maintain the supremacy of law and did wanton things which were against law. He attested all the reports of Sheikh Sahib's speeches.

Mr. Shawl asked that one was yet to be wise to know how he could be a competent prosecution witness and asserted that the worth and weight of his evidence in this court needed much cautious consideration. From the ruling of the Supreme Court of India 1955 Mr. Shawl showed that such a dual capacity was condemned and held against law, fairplay and justice. It was thus futile to produce with State v/s Rehaman Shagoo when this judge appeared just like Parwana against him asserted Mr. Shawl. He asked if such a judge who recorded all the evidence of the prosecution witnesses in Bomb Case and appeared as a prosecution witness in this case could be competent and fit judge to adjudicate the Bomb Case against him.

Quoting Chittley's commentary on sec. 556 Mr. Shawl stated that according to this illustration even a judge who was slightly prejudiced was not fit to be a judge. Here the position was worst. The principle of law according to J Mohammed were based on safeguarding human dignity and affording protection to man and not only on the technicalities of law and thus inference of Mr. Pathak was wrong asserted Mr. Shawl. He added that Shri Matoo was practically disqualified to be a judge in Bomb Case.

He argued that apart from legal technicalities this judge was a partisan witness and his evidence had a little value. Further he said that this judge as he was ill suited to adjudicate as a judge was also ill suited to be an independent witness and thus his deposition carried no weight. Prosecution by producing him as a witness tried to create a confusion and the worth of his evidence stood exposed asserted Mr. Shawl. He acted always like a police magistrate and a police magistrate could never be independent witness. He affirmed that Indian Constitution and law did not recognise this institution although French law did so. His evidence being partisan and influence was not worthy affirmed Mr. Shawl. He was a biased witness against the accused and that too incapacitated him to be a prosecution witness in this case remarked Mr. Shawl.

Arguing his behaviour in ordering the destruction of material evidence Mr. Shawl stated that such an act of this magistrate was quite unfair for the accused. His office did not incapacitate him to be a prosecution witness but his personal conduct and actions from October 9, 1957 when FIR 100 was put before him until now had incapacitated him and made his evidence unworthy of credit asserted Mr. Shawl and added that such an evidence required outright rejection and could not be used against the accused.

Referring to Exp. 34 alleged to be from him Mr. Shawl stated that (i) Its very alleged recovery was made under most suspicious circumstances. In fact it was proved that there was no recovery at all. The alleged preparation of the seizure memo and recovery of anything from the person of Mr. Beg was a fabricated build up. All provisions of Cr. P.C. were violated and thus all allegations were untrue; (ii) The writing of this document and its sending was denied by the accused because Mr. Shawl asserted that he was never in correspondence with Mr. Beg. Thus there was no question of receiving any letter from Mr. Beg; and (iii) The allegation that it was sent by somebody was denied by another accused in the dock. The receipt, recovery, possession and knowledge of this exp. have been denied by Mr. Beg himself. Thus this piece of paper had no value as prosecution wanted to attach to it asserted Mr. Shawl.

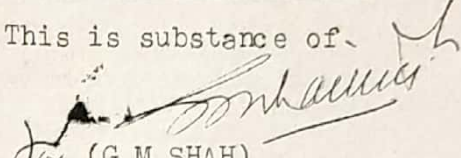
Assuming though denying that this paper existed and was sent by someone to somebody and also was recovered, Mr. Shawl asked as to what was there that was incriminating in this exhibit and added that nothing of conspiratorial nature could be proved from this document. It was just a simple letter and nothing could be shown that referred to any subversive activity or unconstitutional act that was even comprehended would be done in future. This document relates to some past happenings important or unimportant and this too prosecution alleged that it was a heart to heart talk and was incriminating. Mr. Shawl asserted that prosecution thesis was preposterous and this paper was innocuous and had no incriminatory value.

The court rose for the day while Mr. Shawl was arguing his case.

ISSUED BY
T H E
JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE

Copy forwarded to _____
for perusal and favour of publication. This is substance of full argument.

Jammu.
17th June, 1961


(G.M. SHAH)
Counsel & Secretary,
J and K Legal Defence Committee.

.....

JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE
SHAHEEDGUNJ.....SRINAGAR

Telephone:
Srinagar. 707.
Jammu. 5133.
New Delhi. 32202.

K A S H M I R

Branches:

1. The Dawn Canal Road,
Jammu.
2. 81/48 Diplomatic
Enclave, New Delhi.

19th June, 1961.

THE KASHMIR CONSPIRACY CASE

Resume of Mr. Mohi-u-Din Shawl's arguments
6th.....day

Resuming his argument today Mr. Shawl referred to the accession issue and stated that Mr. Pathak in his argument tried to establish his case by attributing motives to the accused by referring to a thing which was not present. He charged the accused with bitterness because Kashmir Government took certain action and alleged that accused wanted to accede to Pakistan. Mr. Shawl denied the allegation and asserted that the actions of the Government were not in consonance with the political views of the accused. He affirmed that under the Constitution it was no offence to have a different political faith and thus there was no question of bitterness.

Discussing the accession issue he asserted that accused always wanted that Kashmir accession should be decided by the people themselves under a free and fair plebiscite. They were wedded to the right of self determination by which they could settle their future. He affirmed that motives that accused wanted to accede to Pakistan were attributed only when prosecution failed to prove its case. He referred to AIR 1937 Cal. on this which held that motives could not be attributed in order to cover an offence. He affirmed that there was a difference of political ideology and there was nothing personal and they had no personal vendetta and thus attributing motives was unwarranted. He suggested that when there was no evidence orator documentary the case should be rejected. He maintained that the only fault of the accused was that they wanted to achieve the right of self determination for the people by peaceful means which was guaranteed by Constitution. He affirmed that that was no offence and they could not be held guilty. The achievement of this goal was lawful and constitutional. He asserted that they meant it and acted upon it scrupulously and that propagating views and mobilising public opinion was not illegal. He quoted Cr. Law Journal Ratan Lal's Law of Crimes 1955 on this point. He added that it was the fundamental right of every citizen to hold his political faith and propagate for it and mould public opinion to its favour.

Referring to Plebiscite Front he stated that it was a peaceful Organisation wedded to achieve right of self determination with constitutional and peaceful means. That would never mean change or subverting a Government or constitution. Their objective was not to change the Govt. but to determine the future of Kashmir and remove uncertainty that was booming over Kashmir for the last fourteen years. Objective was most constitutional and legal. Mr. Shawl argued that Mr. Pathak in spite of knowing all this tried to create confusion when at the beginning he submitted a ruling that politics had nothing to do with this case but for the rest 29 days he only discussed politics and even asked the court to keep political decisions in view. That was contradiction in terms. His endeavour was not to allow the accused to discuss the political view point here. He submitted that the ruling submitted by Mr. Pathak could not apply to this case. That case was against alien Imperial Power when the movement was launched by the late M.N. Roy to overthrow the Government. All the exhibits and the letters written allegedly by Mr. M.N. Roy to his colleagues were directions to overthrow the British Government by violence. It appears that M.N. Roy did not deny the exhibits. In spite of holding extreme views the learned Justice said that he wanted to achieve these extreme views by force. Had he done so by constitutional means it would have been all right according to this ruling. Here Mr. Shawl asked the court to draw a line of contrast between this case and that case. He asserted that a single iota of evidence was not available wherein it could be proved that accused had preached use of force or the overthrow of Government to obtain right of self determination. It was therefore perfectly legal for the accused to agitate peacefully and by constitutional means to achieve their objective according to....

this ruling even affirmed Mr. Shawl.
 Court: The question was about the allegations.
 Mr. Shawl: The object of the plebiscite Front was lawful. M.N. Roy wanted to achieve his object by resorting to force. Here the accused want to achieve their objective by peaceful means which was constitutional and lawful. So far the allegations of the prosecution were considered to be proved by facts. Holding and propagating and achieving political views was not unconstitutional. Thus there was a contrast between these two cases. The means adopted by Plebiscite Front were unconstitutional and its policy was also legal."

Further elucidating he stated that the views held by the Plebiscite Front and the accused for the settlement of Kashmir Dispute were constitutional. He referred to his statement on this point. He referred to various attempts the prosecution made to malign the accused, Plebiscite Front and its members. This all was done with a set purpose in order to silence the accused from demanding the right of self determination. He elaborately showed that Plebiscite Front was a Constitutional Organisation and its aims and objectives were peaceful. It was not a struggle or a movement for power or overthrow of the Govt. but they wanted peaceful settlement of the Kashmir issue and for that they also endeavoured to create peaceful atmosphere in the Subcontinent, asserted Mr. Shawl. He affirmed that by overthrow of Kashmir Govt. this Dispute could not be settled.

Court: Instead of a lawyer a politician has come in.

Mr. Shawl: We were forced into it. Further explaining he said that in spite of this he would not hesitate to express his view point.

Referring to the claim of the prosecution that the conduct of the accused should be taken notice of, he stated that where the accused got a chance to go they pressed to settle the Kashmir Dispute by the free will of the people. The Plebiscite Front took every opportunity to present the case of the people of Kashmir whenever anyone having any authority or influence in India came to Kashmir. He affirmed that no underhand means were adopted and stated that when Mr. M.A. Beg and others got a chance in Constituent Assembly they made the best use of that opportunity. Mr. Shawl asserted that from this the conduct of the accused was evident. This conduct was evident from the stand the accused took in various courts. Even ailing Pir Mohammed Afzal Makhdooni produced himself before this court of law boldly to state what the stand was.

He asserted that when the aims and objectives were constitutional why should they be afraid to come before any court of law to agitate their right. He added that none amongst the accused stood for power but they only wanted right of self determination for the people.

Referring to the prosecution charge that the accused wanted to change the Government and annexe Kashmir with Pakistan he stated that the change of Government would not and could not solve the Kashmir Dispute. In Aug coup Government was changed through clandestine methods which led to bloodshed and repression. Ten days after the joint communique of 21 Aug, 1953 by India and Pakistan was issued for plebiscite. That was a recognition that coup of 1953 did not solve the Kashmir Issue. 7 years after the coup Prime Minister of India issued another communique in which he and the President of Pakistan agreed to resolve Kashmir Dispute by peaceful means. The problem was there and the use of force and violence in Aug, 1953 did not solve the troubled and vexatious Kashmir Dispute. He asserted that the trouble with Kashmir was that uncertainty and insecurity were the result of non settlement of Kashmir accession. This fact was responsible for many a trouble and hardships of Kashmir people. He asserted that if this right was denied to the people of Kashmir then that would reduce them to sub human levels. In view of agreement between India and Pakistan and promises of the World Body the Plebiscite Front and the accused were endeavouring hard to resolve this Dispute peacefully affirmed Mr. Shawl. He termed it to be a luxury to be interested in forming a government or overthrowing it by force. For the purposes of the conduct the court must take into consideration the views of the accused remarked Mr. Shawl.

Plebiscite Front wanted to express a view and not to overthrow a government. Comparing J&K State with a patient of cancer/never thinks about anything else but this disease Mr. Shawl affirmed that till uncertainty was not removed nothing would settle in Kashmir and added that Plebiscite Front and the accused only wanted to remove that cancer and thus they could not think of the luxury of attaining power or government. Mr. Shawl asserted that by this very conduct of the accused and their political view the prosecution story was belied.

He asserted that the question of accession was not a private affair between governments of Jammu and Kashmir and India. It was recognised to be an International question even by government of India thru its spokesman Pt. Jawahar Lal Nehru.

Referring to Plebiscite Front he stated that it was a legal and constitutional organisation. Its methods were peaceful and constitutional. The theory of Prosecution counsel that such and such accused was a member of the Plebiscite Front had thus no legal value asserted Mr. Shawl.

Continuing further he argued that Prosecution Counsel created a confusion by saying that this court was created by constitution. Mr. Shawl affirmed that they never questioned that but questioned the power of the Constituent Assembly. It could go beyond its jurisdiction and pronounce on the finality of accession. Kashmir Constituent Assembly could not do so because Government of India assured the world that it could at the most express an opinion and could not solve this issue. He added that even lately President of Pakistan and Prime Minister of India agreed that Kashmir be solved peacefully. He asked why Prime Minister of India was not censured for it and why were accused produced in the dock for expressing their very views.

Further explaining he said that enacting Administrative Law was one thing and pronouncing on certain fundamental matters which were not in domain of Constituent Assembly was another thing. The Constituent Assembly had not power to pronounce on accession issue and hence the Plebiscite Front which agitated on the settlement of this question was not doing anything unconstitutional. The Constitution affirms that there would be rule of law and rule of law never takes into account what happens to false prosecution stories. Rule of law ordains independent Judiciary. Thus this theory of the prosecution counsel that this court was created by constitution and thus the case should go to sessions falls to the ground. It meant in that the constitutional actions should be guaranteed by law courts. Challenging the competence of Constituent Assembly to decide the accession issue be stated that the question was whether Constituent Assembly could enact over matters like accession over which it had no jurisdiction. He added that Kashmir issue was a peculiar nature in so many respects. It was agreed by all the parties that people would decide their future. The struggle was launched in 1931 and achieving the right of self-determination for the people was the anchor sheet of the movement in Quit Kashmir. He asserted that the sovereignty vests with the people and after 1947 the sovereign rights reverted back to the people and not to the Maharaj. He quoted Gandhiji on this point from Mahatma wherein Gandhiji had held that Kashmiris should settle their future.

Court:- This belief could not be law.
Mr. Shawl: "This belief had forced the Government of India to enter into International agreement and the belief and wishes of such great people guide the governments. This belief was a guiding light under which International agreement were entered into."

AFTER THE BREAK
Resuming his arguments after the break Mr. Shawl stated that these factors : (1) that people had launched a struggle; (2) there was a revolt in one part of the State and there was bloodshed in the other part were taken into consideration by the Govt. of India when the Instrument of Accession reached them and was

-4-

accepted conditionally. In that connection Gandhi had also lent support to the demand that sovereignty vests with the people. To substantiate this he referred to "Integration of Indian States" by V.P. Menon and asserted that it was not a political wish of certain individuals but considered opinion of the Indian Government. Mountbatten also held that in view of the composition of the population the accession should be conditional. Thus Government of India decided that accession should be a conditional. Maharaja Hari Singh had accepted in his letter that he took this action in haste. Circumstances were such but Government of India put all these considerations in view and thus attached this condition. He further asserted that this was also agreed on the grounds of this important factor that the people and the ruler were divergent in their faith and belief.

Referring to Lord Mountbatten's declaration that the wishes of the people would be ascertained, he asserted that this accession was thus conditional and subject to ratification by the people. He quoted various pronouncements of Prime Minister of India in support of his arguments. Mr. Shawl asserted that it was a pledge of the Government of India given to the people of Kashmir and not to a particular party.

high He added that to combat the challenge to the moral forces Government of India had accepted this condition so that the supremacy of the people could be held and sacrosanct. He quoted Prime Minister of India on this point, and showed that the position of India and Maharaja Hari Singh was that of a proposer and acceptor. Both proposer and the acceptor agreed that this agreement was conditional. Government of India gave International status to this agreement. Thus the understanding was that it was to be a condition accession and no other meaning was understood by the parties except this at that time. The condition was that Plebiscite would be held

Discussing it further he stated that will of the people was to be ascertained by the direct vote and not by an electoral College or a party. The words that "we shall accept the verdict" left no doubt that Maharaja Hari Singh's accession was a stop-gap arrangement only to afford Military help to Maharaja to clear the soil from raiders affirmed Mr. Shawl.

affairs He added that Government of India considered it be an external issue and therefore informed the other members of the Commonwealth and foreign countries about it. The matter was always dealt by External Ministry. Thus this fact was fully demonstrated that this issue was not domestic issue of the Government of India. In support of his argument he quoted from the Memorandum of Dec, 1931, to United Nations by Government of India.

Mr. Pandey: "Such documents should be made available to the Mr. Beg:- "That has been done."
Mr. Shawl: "These matters are most relevant for the purpose of this case. The quotations read from such documents are on record of the Court: "Is there anything to show that prosecution refutes this? Prosecution holds that wishes of the people were ascertained in a differ manner. This matter has been clinched. Therefore what you refer does not seem relevant."

Mr. Shawl: "I have submitted that ambiguity would be cleared. My contention was that in presence of these documents and pledges Constituent Assembly could not decide this issue. If the court was that I should not refer to pronouncements of Pt. Nehru that was separate question. I submit once again that Constituent Assembly had no status to pronounce on this issue. The conduct of Government of Kashmir and Government of India was most relevant to lead them the understanding of their intentions about this matter."

Explaining further he told that foreign countries were told that it was not a domestic matter of govt. of India. He referred to para 15 of his written statement on this point and asserted that Govt. of India recognised that referendum and plebiscite would be held under United Nations auspices which meant that wishes of the people would be ascertained. He affirmed that this job was left by Govt. of India in the hands of United Nations and it was Govt. of India that brought this matter there under the chapter which includes the settlement of disputes. Court: What authority Security Council had to make Govt of India

to implement that agreement. When it has been clenched why to repeat it.

Mr. Shawl: "This position Govt. of India took it on herself that United Nations should decide how to ascertain the wishes of the people. Many things have not been admitted by the prosecution which were important to the accused. The Government of India made it clear that plebiscite will be held and in support of that contention the accused quoted these pledges and pronouncements of Government of India. The memorandum to the United Nations by Government of India itself says that accession was conditional. The complaint to United Nations was under chapter 13 of United Nations Charter which includes the settlement of certain disputes. Prosecution now could not resile from that stand taken at that time because agreements with Pakistan were made on this understanding that the wishes of the people will prevail". Further he stated that prosecution now argues that as economic progress had taken place in Kashmir and Constituent Assembly had pronounced on accession there was no need of plebiscite. He termed it as a medieval thought and devoid of reason. He affirmed that even very recently it was agreed by Government of India and Pakistan that Kashmir Dispute was not yet solved.

Ex-plaining further he stated that the court understood that the matter was clenched and prosecution counsel understood that it was political wish. He asserted that it was the considered view of Government of India reiterated so many times and repeated in various agreements before Pakistan and the United Nations that this dispute would be solved by holding a plebiscite.

Arguing further he said that there was not a single resolution of the United Nations that held that Kashmir Dispute was settled or that Government of India could ascertain the wishes of the people as it liked. In fact United Nations stated that question of accession to India or Pakistan would be decided by free vote of the people. It never mentioned anything about ratification of accession by India. Aug 13, 1949 Resolution of UNCIP stated that Government of India and Pakistan reaffirm that the will of the people would determine the question of accession and thus Government of Pakistan was brought in unequivocal terms as a party to this dispute. Mr. Shawl remarked that when United Nations Resolutions were to this effect United Nations placed Government of India as a trustee over the State. A trustee's position was provisional and temporary for certain time. Government of India accepted this position and Pakistan became a party and all the free nations of the World had thus sent their representatives to find out a solution. Thus there was an International Agreement about it.

Concluding his argument for the day he stated that by accepting this position and entering into an agreement with Pakistan at the United Nations forum Govt. of India accepted that final solution was yet to come and thus following six hard realities were accepted:

- (i) Accession was provisional, and revocable;
- (ii) Accession was to be decided by the people through their own vote in a free atmosphere and not by members of any political organisation or party;
- (iii) The State's future was yet a disputed issue;
- (iv) The people of J and K possessed the right to annul accession of Oct, 47;
- (v) The people of the State constitute a distinct and separate entity from the Union of India and people of India and they have the right to join India or Pakistan through the legal method of accession and
- (vi) No fundamental and permanent value was attached to Maharaja's accession because that was a stop-gap arrangement. Thus he asserted that Consenbly could not claim to have settled the issue.

(The court rose for the day)

Issued by
Jammu and Kashmir Legal Defence Committee

Copy forwarded to
for perusal and favour of publication. This is substance of all
argument.

Jammu, 19th June, 1961.

G.M. Shah
Secretary & Counsel,
J and K Legal Defence Committee...

Phone:
Srinagar. 707.

Jammu. 5133.
New Delhi. 32202.

Grmas.....Insaf.
Jammu and Kashmir Legal Defence Committee
Shaeedgunj.....Srinagar
K A S H M I R

20th June, 1961.

Branches:
1. The Dawn Canal Road,
Jammu.
2. 81/48 Diplomatic Enclave,
New Delhi-21.

THE KASHMIR CONSPIRACY CASE
Resume of argument of Mr. Mohi-u-Din Shawl
(7th day.....)(concluded)

Resuming his argument today Mr. Shawl referred to the delay that occurred during the proceedings of this case in enquiry stage. He stated that none could deny that enquiry proceedings had gone for more than three years. The facts of the case show that the prosecution was responsible for it. He referred to court orders passed on various occasions and stated that ordinarily a complaint was produced before the magistrate when all formalities were completed by the prosecution. It took prosecution from 9th Aug, 1953 to April 29th, 1958 such a long time to prepare its complaint, fabricate documents and tutor the witnesses. After such a long time the complaint was produced on May 31st 1958. At Kud when on 11th June the accused assembled the accused were told that still many things had not been done and even the warrant served on the accused were not returned. This was done after 1½ months. Mr. Shawl asserted that thus the prosecution was directly responsible for this delay. He added that the complaint was presented it was presumed that the State had made up their mind with regard to the accused who were to be prosecuted. Sheikh Sahib was arrested under the Preventive Detention Act on April 30th 1958 and still the Govt had not made the mind whether he was to be brought as an accused in this case. Mr. Mitter submitted here on 27-7-58 that he was still thinking on the possibilities whether one or two more accused would be added to the list of the accused. It was only to procrastinate the proceedings because the prosecution had not the sufficient evidence to produce against the accused. It was a strange procedure remarked Mr. Shawl. The omission of not putting Sheikh Sahib at the first instance was a deliberate mischief only to harass the accused and delay the proceedings.

Referring to the request of the accused for the change of venue he stated that the accused moved the court to change the venue to Srinagar. The accused did not know that Jammu was in contemplation although all the accused and majority of the PWs belonged to Kashmir and also the road did not remain in good condition for a long time of the year. He asserted that the opposition to this request was nothing but ulterior more so when even the prosecution many a times admitted here that due to bad weather road and air transport was not possible. He remarked that had the venue been in Srinagar the cause of the delay would have been eliminated.

He then referred to the seven common accused in the Hazratbal case and one in the Bomb Case and stated that had these cases been run together so much time and energy would have been saved. He remarked that for the last more than three years a ll these cases were kept in abeyance and no action had been taken to this way or that way regarding the cases. To remedy this the common accused submitted for exemption from this case but it was rejected and thus it was prosecution who wanted purposely to cause the delay.

The argument that the accused made references to the High Court and therefore delay was caused was fallacious asserted Mr. Shawl. He stated that the accused had the right to move higher courts for remedying wrongs done to them. Justice must be shown that it was being done and therefore such applications would not amount to delay as held by the prosecution. The prosecution did not do its legitimate duty and in spite of that fact the fault was attributed to the accused. This was as much frivolous as fantastical remarked Mr. Shawl.

The prosecution was never ready to put its case before

2

the court and it did not discharge its duties as provided by law. The purpose was only propaganda.

Referring to the illegal procedure adopted by the prosecution he stated that on 26th June 1958 they presented a list of 81 PWs. This was not under law. It was just to make the fun of Cr.P.C. The names were not given in full, the parentage and their residence was not disclosed. The purpose was only to delay the proceedings. This was done in a frivolous manner and the question was how could the court summon such witnesses.

Court: Had you made a petition about it.

Mr. Shawl: Under sec. 208 Cr.P.C. when the accused were present, the prosecution had to examine the witnesses. Continuing he asked what was the purpose of submitting this list wherefrom nothing could be deciphered.

Court: It was they who could take the responsibility to produce the prosecution witnesses or ask the court to do that. They did the former.

Mr. Shawl: That was correct Sir, but here the case was different. They submitted a list which was frivolous in character.

Court: Do you argue the delay or impropriety of this list.

Mr. Shawl: Both Sir. They wanted the court to summon the witnesses. The motive was ulterior. If it were for the benefit of the accused, the complete details would have been given. He asked how could accused know what was meant by the abbreviations used regarding the names of the witnesses like A.Q. Khan, H.S. Muth etc. It was in the nature of a camouflage list giving no benefit to the accused who were behind the bar. It was camouflage which became apparent to the world at large that prosecution was not serious that the proceedings should continue smoothly and in the way as was understood by law, asserted Mr. Shawl.

On October 24th 1958 they produced another provisional list of 303 prosecution witnesses. This again showed the intention of the prosecution to delay the proceedings and harass the accused. The order sheet of the date was silent about the fact whether prosecution requested that these PWs should be summoned. It was obvious from these lists that the previous list was not meant for the purpose of section 208 of the Cr.P.C. Second list gave the details. After 5 months after the presentation of the complaint and second list of the PWs there was no request to summon the witnesses. The only desire was that the accused should remain in lock up and the case should be delayed, argued Mr. Shawl.

This provisional list was second in the series and after this there were further two provisional lists again. The idea behind this list was that investigation under FIR 100 and other FIR should continue so that any clue that would become evident could be corrected by producing other evidence. That was continuing yet asserted Mr. Shawl and added that many a times they thought seriously as to why cross-examine a PW when this liberty was given to the prosecution. Great prejudice was caused to the accused by method of the prosecution. They had not for the last four years produced FIR 100 and this amounted to prejudice and injustice and gave strength to the myth of the prosecution-myth of conspiracy, asserted Mr. Shawl. They sought adjournments on the mere pretext of bad weather and blocking of roads. He remarked that it was very easy to produce the prosecution witnesses who were in one way or the other connected with the Ruling Party. He asked as to why the prosecution witnesses round about Jammu were not presented. This all showed that the prosecution was interested in delay.

He requested the court to note that witnesses of subsequent lists were presented before the previous list was exhausted. He remarked that by this procedure time was taken, adjournments were requested, and thus delay was caused.

contd on page 3.

He argued that as a common accused in Bomb Case the court ordered on 21 November 1959 that he should be sent to Srinagar along with the record. However the bad arrangement of the transport he was taken there along with the record. He added that he could not know that when he reached here on 26th November how on 2nd December this court fixed December 7, 1959 as the next day of hearing. He asked how that was in the order sheet in which that the record had not reached here when the record was sent along with him. There was a delay of so many days and prosecution was responsible for it.

Court: Mr. Lateef had sent a telegram for adjournment.

Mr. Shawl:- Mr. Lateef knew that the record had not gone to Jammu and therefore nothing would be done at Jammu.

Further discussing the cause of the delay he stated that on 19th December 1959 prosecution submitted that one PW was present but papers were not yet received. The court was adjourned upto 3 P.M. on the agreement of the both parties. This PW was a Sub-Inspector and strange it was that he did not get necessary papers with him when he came from a distance of 200 miles.

Court: Were those papers connected with ~~Shawl~~ *Shaw*.

Mr. Shawl: He produced papers here. The order sheet showed that he was summoned as required by law but in spite of that he did not get his papers. There was a waste of 5 hours.

Court: Do hours matter so much when you contend that days and months have been wasted.

Mr. Shawl: It was an instance to show how prosecution wanted to cause delay and harrasement.

Mr. Shawl asserted that there was no delay on the part of the accused whatsoever. When on 26 th December 1959 proceedings in Bomb Case concluded he was told by the Special Magistrate that the road would be closed for sometime and to avoid any kind of delay he left the place next day just at 6 A.M. for Jammu to stand the trial here.

The adjournments were almost caused every month and this meant a great harrasements to the accused. To avoid this the accused applied for the exemption from attendance in this court. Prosecution opposed it on frivolous grounds and thus this very simple request was rejected. He then quoted his own example and said that even his request for exemption was opposed by the Prosecution. He further stated that he had attached a power of attorney for Mr. Lateef. This was done only to avoid delay in spite of the fact that he Mr. Shawl was interested to defend himself. The Prosecution opposed this application on a frivolous ground that he should not be forced to appoint a lawyer. This was unwarranted by law. He asserted that he had every right to appoint a counsel under Section 340 Cr.P.C. The only objection under law could be that either he was not an accused or Mr. Lateef was not an Advocate. Prosecution had no status to interfere in this contract. He asserted that as things happen here Prosecution stepped in with this frivolous objection and objected that this lawyer should not be appointed for a little duration of time which was unwarranted under the provisions of Section 340 A Cr.P.C Code. Under this section the court could exempt any person when any person was incapable to.....

to remain before the court. He remarked that as the objection was warranted by law the motive was that as much procrastination as possible be caused as was possible.

Court: You are arguing a matter about which the court has passed a certain order.

Mr. Shawl: Inferences are drawn from the record of the court.

He argued that prosecution changed its mind because the delay was to cause the delay, and deny the accused all the rights given to him by Cr.P.C for expeditious trial.

Another factor was that for 3 years the Hazratbal Case was pending for the presence of common accused in this case. If delay did not mean the prosecution could send these common accused along with him asserted Mr. Shawl. This delay could be avoided.

Elaborating his case further he stated that in spite of much paraphernalia at the disposal prosecution sought seventeen adjournments because of the absence of the prosecution witness. The case was held up for 85 days because Hazratbal case and for 8 days the case was held up because of the Bomb Case.

Concluding his arguments he submitted that the whole responsibility laid on the prosecution because the delay was caused with the set purpose of keeping the accused behind the bars indefinitely.

Mr. Muhammed Lateef Qureshi, advocate, requested the court that he would begin his arguments now.

.....


ISSUED BY THE
JAMMU AND KASHMIR LEGAL DEFENCE COMMITTEE

.....

Copy forwarded to _____

for perusal and favour of publication. This is the substance of full argument.

Jammu,
20th June, 1961.


(G.M. SHAH)
Counsel & Secretary
Legal Defence Committee.

.....

THE
KASHMIR
CONSPIRACY
CASE.

Defence Arguments
By
Sheikh Mohd. Abdullah.

28th June, 1961.

Issued By
Legal Defence Committee
J&K State.

ADDENDUM

Following is the full text of oral arguments advanced by Sheikh Mohammad Abdullah in the Court of Mr. N.K. Hak, Special Magistrate, Jammu, on 28th June, '61.

Sheikh Mohammad Abdullah, Chief accused in the Kashmir Conspiracy Case, elaborating his arguments advanced in his written statement stated that the entire Prosecution Case was a big joke and farce. "This is the inevitable conclusion which could be drawn from the proceedings of this case," he said. Referring to the slanderous expressions and insinuations hurled by the Senior Prosecution Counsel at him, his family, friends and colleagues over and over again, he said that he did not propose to discuss the reasons which prompted the Prosecution Counsel to adopt this conduct. It has been his fate all his life that all those who maligned him acquired large benefits and mundane comforts. Some got jagirs, others got lucrative posts, some got medals and again some even aspired to all India leadership. He did not, however, understand one thing: What inspired and prompted the Senior Prosecution Counsel to drag in his arguments, repeatedly the names of his wife and daughter, knowing full well that neither of them was an accused in this case nor was there any serious charge brought by the Prosecution against them. The Prosecution Counsel knew very well that these poor innocent ladies could not answer him back. Therefore, it was most unchivalrous on his part to drag them and other ladies belonging to high families such as the sister of Kh. Ali Shah in this case, again and again. "True that after independence the ruling circles in India have completely lost sight of those noble values of life which Gandhiji gave to the nation", remarked Sheikh Saheb. "This was a great tragedy particularly for those hundreds and thousands of men and women of India who sacrificed

everything to uphold these noble values - values of non-violence, truth, fair-play, justice, human brotherhood and love for the down-trodden". They expected that these values will not be preached to the outside world only but practised at home also. Hardly could it, however, be believed, he went on, that India was fast losing even ordinary human decency.

Sheikh Mohammad Abdullah stated that the Senior Prosecution Counsel was believed to be one of the eminent members of the Indian Bar and a gentleman. He has been included a number of times as a member of the Indian delegation to the General Assembly of the United Nations. He was known to have gained the respect and confidence of the Prime Minister of India who, the Sheikh described "as one of the noblest and finest characters that India has ever produced." "In spite of my political differences with him and despite his other failings - and who is immune from failings - none can dispute this fact about him", asserted Sheikh Sahib. Therefore, it was a surprise for him to hear the Prosecution Counsel dragging in his arguments repeatedly the names of those ladies, despite his association with such a great personality. He has not, therefore, been able to fully understand yet the aim and purpose of the Prosecution Counsel to indulge in such uncalled for mud-slinging. But two reasons struck him prominently which might have prompted for recourse to this conduct. Firstly, the aim may be to derive some mundane advantages for himself or secondly he was arguing a very bad case, when generally lawyers begin to abuse. It was incomprehensible to believe that such an eminent lawyer as Shri G.S. Pathak would draw strange and ridiculous inferences from the facts of the case which would make any lawyer a laughing stock in the legal profession. "If it was to gain some mundane advantage I wish him good luck. May be, he abused us to please his clients finding nothing in the case". He further said that

Mr. Pathak was not justified in attributing to him the authorship of an alleged letter to the Security Council on the basis of the description by it of the Kashmir problem as an "oozing sore", which expression was also to be found in his petition to the High Court. Many others had similarly described the Kashmir problem. He further added that Mr. Pathak assumed things, drew imaginary pictures and then came to strange conclusions. He questioned the Prosecution Counsel's contention that he thought Pakistan to be a friend and India an enemy because he had said that any country supporting plebiscite was his friend and that opposing it his enemy. "How could one answer such spurious and non-sensical arguments?", Sheikh Mohammad Abdullah asked.

He stated that from the records of the case there was no incriminating evidence against his wife, daughter or his son-in-law's sister which could have prompted the Prosecution Counsel to drag in their names in this Court. Two simple and innocent letters alleged by the Prosecution to have been written by Khalida, his daughter to her sister-in-law suggesting giving relief to the victims who fell to the bullets of the perpetrators of the 9th August Coup-d'etat or who were maimed and disabled for life. "Is it a crime in India of today even to help those in distress?"

Dealing with the alleged receipt of money by his wife from Pakistan, he said; "assuming though denying that she received money to help her in defending this case or overcoming her distress after August 9, 1953, is it a crime? We receive financial aid from Britain even today in arranging our defence. What right had anybody to intercept money, which, according to Prosecution, came to Begum Abdullah from Pakistan?" In this connection he referred to the financial assistance rendered by the Indian National Congress to freedom fighters all over the world. He cited the case of

Algeria and to the funds that were raised in India to help the freedom fighters there on the appeal of Congress. Everybody knew that the people of Algeria were fighting a real war against the French Government and yet this did not deter the people of India to render them financial assistance. Sheikh Sahib also referred to the funds raised in India for the victims of a recent treason trial in South Africa. "Did Indian people commit any offence by contributing to such funds?" he asked. "Could this also come under the purview of Section 121-A of Cr.P.C.?"

The other allegation against Begum Abdullah is an alleged letter which is attributed by the Prosecution to have been written by her to somebody in Pakistan and which was recovered from Prosecution witness, Pir Atta Mohammad Thindum. When the said Pir was shown this alleged letter in the Court he failed to identify it. Regarding the allegation of the Prosecution that Begum Abdullah was directing the activities of the Plebiscite Front and carrying verbal messages from her husband to the leaders of the Front and assisting the organisation in other material aspects, he said that his wife had no interest in politics and never associated herself with any political party in the State. He referred to the evidence of what he called two star Prosecution witnesses, Bashir Ahmad Shahbaz and Mohammad Sultan Gaznavi and said that Shabbaz had clearly stated that the Plebiscite Front never received any kind of aid from Begum Abdullah and Gaznavi had disclosed the nature of "my oral instructions from jail through the Begum to the Plebiscite Front". He said that "I had directed boycott of the Constituent Assembly although the Begum had not visited me then and Mirza Mohammad Afzal Beg, accused, who led the boycott of the Assembly was with me as a detenu only three days earlier. He was released from Kud Detention Camp on 19th of October, 1956. He stopped at his house for a night and then

left for Srinagar to attend the Session of the Assembly which began on 21st October. Thus this single instance was enough to prove the incredibility of the whole Prosecution evidence."

Addressing the Court, Sheikh Saheb stated that he need not take the Court's time by going into the evidence of all the Prosecution witnesses. That job was ably and adequately done by "my colleagues Messrs. Beg, Shawl and by Mr. Mohammad Lateef, Advocate, the Defence Counsel during the course of their arguments. They proved to the hilt the contradictions in the statements of the Prosecution witnesses and the character and the veracity of their depositions.

"These are the only allegations brought by the Prosecution on the files of this case against my wife and daughter," he said, and the Senior Prosecution Counsel is supposed to know this. Yet and yet it was amazing and strange for the Prosecution Counsel to indulge in mud-slinging against them.

Referring to the sister of his son-in-law he stated that there was absolutely nothing against her person with the exception that some innocuous posters were alleged to have been recovered by the Police on search from her house. Her son, a teen ager was put in jail and she was included in the list of co-conspirators. He said that the several lists of co-conspirators had been filed by the Prosecution in the Court "in order to malign us, strike terror amongst our sympathisers and stop all avenues of future possible defence."

Elaborating on the reference of 'Blitz' in the written statement, he said that despite the tremendous efforts of the Ruling circles of India and the State to suppress truth about the causes that led to the 9th August, 1953 Coup, "the curtain is slowly but steadily being lifted. Truth will come out, however, one might try to bury it. That is the lesson which history has taught us," he said. The revelation in the "Blitz" belies the claim made by the ruling circles in India

that they had no hand in this sordid affair. One day the great Indian nation would come to know about the real facts. Today they were made to believe that India had not produced a worse traitor than Sheikh Mohammad Abdullah. But he had no doubt in his mind that time will come when they would realise as to who were the real traitors and betrayers of India's honour, who could without any qualms of conscience conspire to stab their friends in the back. Then they will find that Sheikh Abdullah and Beg were not amongst such traitors. He added that whatever may happen he would always remember with gratitude the help and assistance rendered to the people of Kashmir in their distress and the affection showered upon him once by the people of India.

Commenting on the references to Mr. Krishna Menon's reported speeches in his written argument, Sheikh Sahib said that it was unfortunate that Shri Menon should consider everybody a traitor and guilty of treason who did not agree with his views and should ask them to leave the country. Perhaps, he wanted to live alone in the whole sub-continent including even Pakistan. He added that Shri Menon was fond of delivering long speeches without of course having much sense in them. This great Krishna Menon is believed to be the conscience keeper of the Prime Minister of India.

Commenting on the remarks of Shri A.K. Sen in the Lok Sabha in December, 1960, "when he questioned the inferential reference of Mr. Masani to me amongst the "patriotic Indians" Sheikh Sahib said that he did not know the Minister personally. He believed that "when we were engaged in fighting the freedom battles for India, this gentleman must have been loitering in some streets of Calcutta." This great Law Minister of India not only stop at that but during the debate on the demands of his Ministry in Lok Sabha, he again referred to this case.

on March 24, 1961, stating, "the Kashmir conspiracy case has proved one thing to the whole world, that in Kashmir there is the fullest of liberty, even to an accused in a conspiracy case. Each accused has taken months to make his statement under Section 342 and everyone knows how abusive those statements have been against the highest in the land". Sheikh Sahib took strong objection to this statement and stated that it is common knowledge that a person is always considered innocent before law unless proved guilty. There was, therefore, no reason to believe that a person adorning the chair of a Law Minister in the Centre would be ignorant of this elementary principle of law. He laid particular emphasis upon the words "even to the accused in a conspiracy case" and said that perhaps it was the wish of the Hon'ble Minister to get us hanged even before a trial. Sheikh Sahib asked the court that the statements filed by the accused under S.342 were on the record of the case and the Court had not given its verdict yet on them, and even the Prosecution had not characterised them as abusive in content. But, on the contrary, the Senior Prosecution Counsel had described some of the statements as "learned". Therefore, continued Sheikh Sahib, the remarks of the Hon'ble Minister were not only untrue and false, but tantamount to clear Contempt of Court. The Law Minister had no right to comment on proceedings of this Court. He felt that he could have been hauled up for Contempt had he not made this statement on the floor of the Parliament which is a privileged forum. It was an abuse of privilege and Sheikh Sahib indicated that he would ask his lawyer, as soon as he gets an opportunity, to bring this matter to the notice of the Hon'ble Speaker of the Lok Sabha, requesting him to pull the Minister up. Sheikh Mohammad Abdullah described Mr. Krishna Menon & Mr. A.K. Sen as the two pillars of Government of India and "darlings" of the Prime Minister.

Commenting on the huge expenditure incurred by the Prosecution on this case, Sheikh Mohammad Abdullah said that it was actually Government of India who was footing the bill and putting in their vast resources, both financial and administrative, in this case to secure our conviction. The Government of Jammu and Kashmir was only a cover. He read a long list of local lawyers and advocates who have been engaged by the Prosecution in this case, besides the top-most Counsel from India, named in his written argument. During Mr. Pathak's arguments, another lawyer was added by the Prosecution to the already existing list of lawyers engaged by them. He was Shri Chaturvedi of Allahabad - a very handsome, tall and robust gentleman. During the whole argument stage of Mr. Pathak, he hardly spoke a word nor could it be believed that he could give any advice to the Prosecution at this late stage. He left us before Shri Pathak's arguments concluded and yet, if my information is correct, he got away with Rs.35,000/- as remuneration. This one single instance would show how recklessly money is being squandered freely at the cost of the tax-payer. Such being the case and "with this interest on in the matter by the Government of India, how am I expected ^{to believe} that an ordinary Magistrate in the State or for that matter any Court in India will disregard the wishes and interests of the Government of India in this case and judge me squarely and fairly?" asked Sheikh Mohammad Abdullah.

The Magistrate observed : "The Court will refuse to be influenced and will not even look into the statements made by Mr. Sen or any other person outside the Court."

The Special Prosecutor Mr. Nanda submitted that there was nothing similar on the files of the Court to which Sheikh Mohammad Abdullah retorted that the Lok Sabha records were more important than those files.

Resuming his arguments after the break, he told the Magistrate that the Prosecution Counsel had not properly appreciated his refusal to answer the Court questions during his examination under Section 342 Cr.P.C. Therefore, he was forced to give some of the reasons that had prompted him to adopt this attitude. Commenting on the remarks of the Chief Justice of India as contained in his written argument, Sheikh Sahib said that such remarks from the highest judicial authority in India necessarily create apprehensions in the minds of the accused that they may not receive a fair deal. He thanked the Court, however, for giving him an assurance that it will not be influenced by such extraneous remarks of anyone.

Without questioning the technical competence of the Government to appoint a Magistrate to enquire into the charges brought against the accused by the Prosecution, Sheikh Sahib commented that the fact remained that it was the same Government who was responsible for the happenings of 9th August, 1953. He therefore, questioned the fairness of the complainant's right to appoint the Judge for his own cause and then expect the accused to have full confidence in the latter's impartiality. The Magistrate asked : "Who should appoint the Magistrate, if not the Government ?" To this inquiry Sheikh Sahib said that in cases like the present one, the inquiring Magistrate ought to have been selected by the Chief Justice of the State and not by the Government, who is complainant in the case. Mr. Mirza Mohammad Afzal Beg intervened and submitted that this was purely a legal question and Sheikh Sahib could not be expected to answer it. He was however, prepared to answer the question fully if the Court so desired. Sheikh Sahib continuing his arguments observed that under such circumstances even if the Magistrate were absolutely impartial to the accused, he will not inspire confidence in their minds. It has been his life-

long experience, as it must be of those of others, that in this mundane world, generally everyone looks which side his bread is buttered.

It is hard and extremely rare to find men of Gandhiji's character and calibre who could gladly face the bullets of an assassin to uphold truth.

Sheikh Mohammad Abdullah submitted that two specific questions were posed by the Prosecution Counsel to him : One was that why he did not reply to questions of the Court u/s 342 Cr. P.C. The inference that the Prosecution Counsel sought to draw from this was absolutely unwarranted in law and he could quote a number of rulings on this point. He had, however, explained to some extent the causes and apprehensions which led him to adopt such an attitude.

The other question posed to him, submitted Sheikh Sahib, was that a change had come in him in 1952. Before answering this question he stated that, "absurdities of the Prosecution case are so obvious and its inherent contradiction so indubitable that it deserves outright rejection by the Court. Thus alone could the judiciary of the State, if it were really independent redeem to a certain extent the reputation, not only of the Government of Jammu and Kashmir but that of India also." In this connection he referred to the mass treason trial launched over four years ago by the South African Government in which many people were accused of conspiring to overthrow that Government by violent means. The judge discharged all the accused without even asking the Defence to reply to the arguments of the Prosecution, thus redeeming the reputation of the South African State. "Why should it be left to the judiciary of the South African State alone - a State whose governmental policies are hated by almost all the States of the world - to uphold the traditions of the British judicial system?" he asked. "After all we in India have a judicial system based on British traditions." Therefore, the least that the accused expected

from the Court was that it should have thrown out the case without calling upon the Defence to reply to the arguments of the Prosecution. The evidence produced both oral and documentary called for no other course than the outright rejection of the case.

Sheikh Mohammad Abdullah repudiated the charge of conspiracy to overthrow the Government by force and secure wrongful annexation of Kashmir by Pakistan. These heinous charges were levelled by the Prosecution at the accused in the dock who have the brightest record of their services in the cause of India's freedom movement and one nationhood. If they had wished their State to become part of Pakistan in 1947, there was no one to stop them from such a course.

Referring to Bakhshi Ghulam Mohammad, Prime Minister and complainant in the case, Sheikh Sahib said that since the coup of 9th August, 1953, Bakhshi Sahib had said many things, delivered innumerable speeches and held several Press Conferences in all of which he accused him of many obnoxious and frivolous charges i.e. corruption, mal-administration, nepotism and even conspiracy with foreign powers, to declare the State independent, with a view to mislead and poison Indian public opinion against him to gain his own ends. "I do not want to take your time in repudiating these baseless and malicious accusations", he submitted to the Court, "because that is not my purpose here nor are these the issues involved in the case. But the inference that I want to draw is that upto now Bakhshi Ghulam Mohammad has nowhere accused me of the charges which the Prosecution has made the basis of this inquiry. I challenge the Prosecution to show me a single phrase ever uttered by Bakhshi Ghulam Mohammad which could support their contention that I wanted to overthrow his Government or to forcibly annex the State with Pakistan. On

the contrary, there are his numerous public announcements wherein he offered to step down from the office of the Premiership in case I accepted his program and policy". Reading from some public statements of Bakhshi Ghulam Mohammad, Sheikh Sahib said : "When I could have the premiership of the State for the mere asking, why need I have conspired and resorted to violent and unlawful means to get it ? Today there is no dearth of the highest positions for me in India as well as in Pakistan. I have been several times approached even during the present enquiry to return back to power and accept the responsibility of the premiership and give up the demand for securing right of self-determination for the people of Jammu and Kashmir. But I will never sacrifice my principles for self aggrandizement or for transitory and mundane advantages."

Regarding the charge of facilitating wrongful annexation of Kashmir by Pakistan, Sheikh Mohammad Abdullah alluding to the references of Mr. Krishna Menon's speech in the Security Council and Bakhshi Sahib's speech at Banaras, commented that in view of these clear declarations he was amazed at the courage of the Prosecution to persist in their charges against the accused which were "mere figments of their fertile imagination".

Shri Panday, the Prosecution Counsel told the Court that Sheikh Sahib was referring to the documents that were not on the record to which the latter retorted that the same could be produced if asked for by the Court.

Continuing his argument, Sheikh Mohammad Abdullah observed that one cannot produce any better evidence to rebut the charges of conspiracy to overthrow the Government and of wrongful annexation of the State with Pakistan, than the statements and public declarations, quoted already, of the Defence Minister of India and the Prime Minister of the State, the complainant in the case.

He denied the Prosecution contention that he changed before he was dismissed and arrested on Aug. 9, 1953. Quoting profusely from the speech of the Prime Minister of India, delivered in the Lok Sabha on 7th of August, 1952, he said that some people now question his wisdom of having developed such close relationship with Pandit Jawaharlal Nehru, but he asked : "Who would not love and bow before him for giving expression to such noble sentiments and ideals, and why should we now be prosecuted for upholding these very principles and ideals ? "

Sheikh Mohammad Abdullah explained to the Court the difference between referendum and plebiscite which the Magistrate had asked Mr. Mohiuddin Shawl to throw light upon during the course of his arguments. He said that these were the two weapons in the hands of the people who are considered sovereign in the modern set-up of democracy. But while Referendum limits the choice of the people to mere yes or no with regard to a controversial piece of legislation, the plebiscite is wider in its scope and is resorted to when fundamental changes such as territorial adjustments between two sovereign States are involved. In this regard he cited the case of Iran where a referendum was held on oil nationalization issue during Mr. Musaddiq's premiership. He also cited the examples of Saar, outer Mongolia and Camerons and other States of Africa, where the question of territorial adjustment was resolved by holding plebiscite. The Magistrate asked : "Is there any such provision in the Indian Constitution", to which Sheikh Sahib replied that that was the very basic concept of democracy and, therefore, inherent in all democratic Constitutions.

Commenting upon the communique issued by the two Prime Ministers of India and Pakistan on 21st August, 1953, Sheikh Mohammad Abdullah stated that this was supported by

Bakhshi Ghulam Mohammad strongly in his statement issued to the Press on August 22, 1953. He then quoted portions from this statement in which Bakhshi Ghulam Mohammad had ^{inter-alia}, stated

- (a) "I welcome the declaration of the two Prime Ministers in regard to the future disposition of the State of Jammu and Kashmir on the basis of the principle of self-determination. This declaration was finalised on behalf of the Government of India with our concurrence and has our unqualified support. The reiteration of the principle that the people of the State should be afforded fullest opportunities of expressing their will without coercion or pressure acquires great significance in view of the resolve of the two Prime Ministers to have the dispute settled through peaceful means and without any outside interference
- (b) "I now hope that the decisions of the two Prime Ministers will be implemented faithfully,
- (c) "Of late proposals about unnatural partition of Jammu and Kashmir State had been mooted by responsible quarters here and abroad and consequently the memory of the grim events of 1947 was haunting the people in all parts of the State. I am happy that it has been recognised that the unity of the people of the Jammu and Kashmir should not be disrupted in any way
- (d) "Now that we have succeeded in securing our right of self-determination, we can hopefully look forward to more peaceful times.
- (e) "The elimination of foreign interference and the presence of good-will and co-operative spirit, of which there is abundant evidence in the statement

of the two Prime Ministers, will in our opinion lead to a successful and honourable settlement of these issues. As soon as, these matters of dispute are dealt with amicably, the Jammu and Kashmir Government will consider the question of formally appointing a Plebiscite Administrator and inducting him into office. We believe that for the discharge of onerous responsibilities as a Plebiscite Administrator, a person of proven impartiality and merit, free from international controversies and commitments will be selected to hold this high office "

(f) "No effort should therefore be spared to bring the two countries closer to each other."

Sheikh Mohammad Abdullah observed that the accused in the dock wanted nothing more than the faithful implementation of what has been stated by Bakhshi Ghulam Mohammad in the above excerpts : "Why then this great hulla-ballo about the demand of the Plebiscite"? he asked. It is pertinent to note, said Sheikh Saheb, that this statement by Bakhshi Ghulam Mohammad was made two weeks after his arrest in August, 1953, which clearly proves the absurdity and hollowness of the Prosecution assertion that there had arisen differences in ideals and policies between him and some of his colleagues in the cabinet or of the National Conference.

Alluding to sub-paragraph 4 of Para 14-B of his written argument, Sheikh Mohammad Abdullah deplored that there was a wide gulf between the precept and practice in the statements made and pledges given by the Government of India. He added that if according to Government of India pronouncement in 1948, "there is to be no victimisation of any native of the State, whatever his political views or affiliations may be and no Kashmiri will be deprived of the right to vote," then why all this victimisation and harassment which the accused in the

dock and thousands of others along with them are suffering since 1953 ?

According to the Prime Minister of India, the Indian Army went to Kashmir "to protect the people and as soon as this duty is discharged, our forces need not remain there and we shall withdraw our forces " The Indian Army was sent to Kashmir to protect the right of self-determination of the people of Jammu and Kashmir against onslaught of raiders. In another place the Prime Minister had stated the Indian Army had come to protect the people of the State "from the invasion and rape and loot and arson and everything that accompanied that invasion" and not with the object of acquiring the territory of the State for India. Therefore, if any one now felt that there was no further need of protection by the Indian Army and accordingly wanted that it should leave the State, "what crime did he commit ?" he asked. He further added that he had very high regard for the Indian Army personnel and that he has had personal and most cordial relations with many of its senior officers, but he could never believe that in Gandhi's India the Army was raised for territorial gain and subjugation.

Concluding his arguments, Sheikh Sahib thanked the Magistrate and requested him to keep his written arguments on the file of the case, a signed copy of which he presented to the Court.

-----Issued By:
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

IN THE COURT OF MR. N.K.HAK, SPECIAL MAGISTRATE, JAMMU.
STATE
VS
MIRZA MUHAMMED AFZAL BEG¹⁰ of
AT¹¹ THERI.
CHWAR
18

Mr. Magistrate Sir,

I have listened with due deference to the arguments of the learned Prosecution Counsel for over four weeks and have patiently borne slanderous expressions and insinuations hurled at me, my family, friends and colleagues over and again, the real object of which I do not propose to discuss here. One or two observations of the learned Counsel, however, call for an explanation.

On 1st April, 1961 the learned Counsel took an exception to my refusal to answer the questions put to me by the Court u/s 342 Cr.P.C., as well as to the reasons I had advanced for my attitude in my written statement. I had stated therein "very grave issues of far-reaching implications are involved which cannot only affect the four million people of the State but also the people of the Indo-Pak sub-continent and even of Asia. Moreover, the personalities connected with this Case are of considerable importance from the point of view of their power and influence."

The learned Counsel did not consider them at all a 'reason'. They seemed to him of 'flimsy character' and he observed, "if there were grave issues then it was all the more important to explain them." The Counsel conveniently omitted to take the trouble of going through my whole statement, otherwise he would not have failed to notice the detailed reasons that I set out in my transfer petition to the Hon'ble High Court in December, 1958, to which I made a prominent reference in my statement. I detailed out facts and their far reaching implications as well as the personalities involved, and made out a strong plea "in fairness and justice of a judicial probe scrupulously above board and in a free atmosphere by an eminent individual of high character and integrity, capable of exercising independence of judgment and action."

After having listened with utmost patience to the arguments of the learned Counsel and his personal comments briefly mentioned above, I feel constrained to cautiously lift the curtain from some of the circumstances inherent in this Case which urgently call for such an untainted judicial probe as I have indicated above if it is intended to be fair and just not only to the accused, but our own conscience also. Impelled by the desire not to vitiate the

atmosphere, I am speaking with extreme reticence. I repeat that the time has not yet come to unfold the tragic background story of the present Case. This is neither the proper forum nor will it serve any purpose here.

2. In working up his argument that accused intended to overthrow the Government of the State in collaboration with Pakistan officials, the learned Counsel dragged in the Pak-American Military Pact and tried to create an impression in the World that Pakistan was "misusing the American Aid in Kashmir." Apart from the serious repercussions of such an observation, it is patent that the introduction of such points in the argument does drag in high personalities and most important and delicate international issues. Am I expected to discuss them frankly in this forum with any grain of confidence for a fair deal? Incidentally, the force of the learned Counsel's argument, with all its condemnation of Pakistan Government running through, is bound to make considerable contribution to the cold-war, that unfortunately already exists between the two neighbouring countries. It is the patriotic duty of every one living in the sub-continent to make every effort in lessening this cold war atmosphere and try to create friendly relations between the two countries.

Addressing the recent Indo-Pak Cultural Conference in New Delhi, Pt. Jawaharlal Nehru, is reported to have said:

"We must not drift towards a cold-war attitude which is dangerous.....Whatever the differences they should be resolved by peaceful means."

No one would appreciate these words of the Prime Minister more than the people who live in this unfortunate State of Jammu and Kashmir, for it is they who have become the first casualty in this cold-war for the past more than a decade. I, therefore, extremely regret that Shri Pathak's argument has not done any justice to the wishes of the Prime Minister but has leashed out instead a fresh wave of cold war which is bound to have its pernicious effects.

3. It is a matter of historical record that an intense wave of cold-war was started against Kashmir before the fateful day of the 9th August, 1953, of which I was the Chief Victim. Much of the activity was carried on under-ground and kept a close secret. By sheer twist of history, however, the curtain was lifted slightly by one of the collaborators recently. The Indian world is not unaware of the role played by the well known Indian Journal ' Blitz ' during and after the coup d'etat of - 1953. In its special issue of 25th February, 1961, on page 39, under the sub-title "How Blitz moulded the Kashmir Politics," the Editor writes :
"It can now be revealed that Editor Karanjia

was invited to New Delhi by the late Rafi Ahmed Kidwai early in August 1953 and supplied with all the facts about the anti-national activities of Sheikh Mohammed Abdullah and Mirza Muhammed Afzal Beg. The Government desired Blitz to prewar public opinion in advance for the drastic action contemplated...."

.....(Blitz)
This gives a peep into the causes that led to the tragic events of 9th August 1953 and the powers and personalities involved in the matter. If a judicial trial can claim any impartiality or hope to inspire confidence, the Tribunal has had to be of such a high order as I indicated in the petition to the High Court. The ridicule of the learned Prosecution Counsel, notwithstanding, I contend that a Tribunal of a very high character and integrity, immune from even a semblance of influence from the highest power that be, is the very sine-qua-non in these proceedings, if they are to be fair.

4. Soon after my rearrest under the Preventive Detention Act on 29th April 1958, the Permanent representative of India at the United Nations, Shri Arthur Lal, wrote to the President of the Security Council on 11th June, 1958:

(i) "..... Since Sheikh Abdullah's arrest and detention in August, 1953, he, his relatives and his associates, including some of the accused (in Conspiracy Case) decided to bring about over-throw of the State Government established by law and to that end enlist the support of and join hands with Pakistan agents and officials. To achieve this object, accused, between August 9, 1953 and April 29 1958, amongst themselves and with other persons, known and unknown, at Srinagar and diverse other places, both in and outside the State, conspired to overawe by means of criminal force, the Government of the State."

(ii) "Sheikh Abdullah had been making public statements calculated to inflame religious passions and seeking to create conditions of disorder and lawlessness and supplementing Pakistan's subversive and sabotage activities in Kashmir

The above information was supplied to the President of the Security Council in justification of my re-arrest in April 1958 and he was requested to circulate the letter to the other members of the Security Council as a Security Council document. The language used and the grounds set out in the above quotation are exactly the same as that used in the paragraph 4 of the petition of complaint lodged by D.W. Mehra, Inspector General of Police Jammu and Kashmir, in this court on 21st May, 1958. It is pertinent to note that I was joined as an accused in the Case on 23rd October 1958. This pre-judged condemnation having emanated from the Chief Representative of Government of India at the United Nations, naturally demolished any ray of hope for a fair trial.

5.

During the brief spell of my freedom in 1958

Shri Krishna Menon, Defence Minister of Government of India, publicly warned me that the Indian Constitution will not give any protection to me if I questioned State's integration with India. Addressing a public meeting in Andhra - on 3rd February 1958 he is reported to have said :

"If anybody in Kashmir today questioned the State's integration with India, he was guilty of treason. Anybody doing so ceased to be an Indian and thereby lost the protection of the Constitution and the law...." (The Statesman 4th February, 1958).

Thus the doors of all the organs of the State functioning under the Constitution were quite prematurely banged against me by one of the highest executive authorities in India. The Hon'ble Defence Minister could, with no stretch of imagination, be unaware of what was being cooked up against me when he made the above public statement, unless all this Case is a subsequent concoction.

In another of his public utterances at Madras in February 1958, Shri Menon is reported to have said :

"Those who oppose or deny Kashmir's accession to India are traitors and should leave the country."

These statements, therefore, successfully vitiated and poisoned the atmosphere against me well in advance of time and smashed any hope to secure justice under the Indian Constitution. Is it fair to expect that I could have sustained confidence and faith to receive justice and fairplay under such circumstances ?

6. There is yet another dignitary of Government of India who, without any qualms, indulged, albeit obliquely, in my condemnation while this enquiry is still pending against me. This gentleman is no less than Shri A.K. Sen, the Law Minister of Government of India. During the debate on the Preventive Detention Act, in the Lok Sabha on 1st December, 1960, he questioned an honourable member's inferential reference to me amongst the 'patriotic Indians' which clearly indicated the working of his mind. He, as a Law Minister, is controlling and directing the conduct of the Prosecution in this Case.

7. It is an open secret that Government of India is behind this prosecution and is spending enormous amounts to finance it. On 18th March, 1961, the 'Hindustan Times' of Delhi disclosed that the Conspiracy Case "cost Kashmir Government over three lacs, including Rs. 44,421.50 as the fee of the Counsel engaged by the State." But large number of counsel and their juniors engaged to conduct the case from time to time must have cost tens of lacs of rupees so far. It is pertinent to ask, who is footing their bill ? Obviously it is the

Government of India which has harnessed the Case the services of eminent counsel like Shri G.P. Bitter of Calcutta; Shri G.S. Pathak of Allahabad; Shri Nageshwar Prasad and Shri Pandey of Patna and Shri Chaturvedi of Allahabad - not to mention their juniors. My own experience indicates that the services of each one of the above lawyers will not cost less than Rs. 2,000/- a day. The total financial effect can easily be estimated. Besides this, a Deputy Director of Central Intelligence Bureau with several Indian Police officers as his assistants has been attached with the Case from its inception and appointed as a Special Prosecutor to conduct the day to day proceedings. Thus Government of India have put in their vast resources, both financial and administrative, in this case in order to secure our conviction. The Government of Jammu and Kashmir is only a cover. With this interest in the matter by the Government of India how am I expected to believe that an ordinary magistrate in the State or for that matter any court in India will disregard the wishes and interests of the Government of India in this Case and judge me squarely and fairly ?

8. Shrimati Mridula Sarabhai, references about whom have been repeatedly made in this Case, was detained in 1958 by the Government of India under Preventive Detention Act. When her Habeas Corpus petition came up before the Supreme Court, the Chief Justice of India while rejecting the petition, was reported by the 'Indian Express' of 25th November, 1958, to have observed, among other things, "each item of the acts alleged had to be judged in the light of the struggle going on between the two countries for Kashmir." Obviously the two countries referred to are India and Pakistan. It passes my comprehension how on earth a magistrate in the State is to take a detached view in regard to my alleged activities after having known the views of the highest judicial authority cited above. I am sure that the learned Prosecution Counsel is not unaware of all this. Hence his strenuous efforts to hook us up with Pakistan Government and her officials.

9. In my transfer application to the Hon'ble High Court, I solicited that the enquiry in this case should take place in a completely independent atmosphere, free from all internal and external influences. I stressed that the enquiry officer should, in view of the circumstances of the case, be a person who can keep the scales of justice even between the parties without fear or favour. But in face of facts, some of which I have set out above, it seems that I was asking for the moon (though that even is not impossible in these days of space travel).

10. Incidentally I might submit one more point in this context. The present Presiding Officer of the Court is a Magistrate appointed by the Government which was brought into being through the Coup of 9th August, 1953 staged against me and my colleagues. In pursuance of that coup the Government headed by me was over-thrown by treacherous and shady means, followed by violence and force, with the full backing of Government of India. It is the self-same Government which has selected and appointed the present Magistrate to enquire into the charge against me and other accused-the victims of 9th August Conspiracy - that we intended to overthrow by criminal force the Government established through the coup. I am not questioning the technical competence of the appointment of the Magistrate but in justice and good conscience is it fair that the complainant should appoint the judge for his own cause and then expect the accused to have full confidence in the latter's impartiality? Therefore, if the proceedings of this court, have continued to be stage-managed since the very start of the case, this position is perfectly understandable.

11. The absurdities of the prosecution case are so obvious and its inherent contradictions so indubitable that it deserves outright rejection by the court. Thus alone could the judiciary of the State, if it were really independent, redeem to a certain extent the reputation not only of the Government of Jammu and Kashmir but that of India also.

The prosecution story is that the accused conspired and "the chief aims of the conspiracy were to overthrow the Government of the State and to facilitate the wrongful annexation of the territory of the State by Pakistan." Both these imaginary and fantastic charges have been repeatedly contradicted by Bakhshi Ghulam Mohammed, the Prime Minister of the State himself.

(i) Addressing the delegates of All India Legislators' Convention held in Lucknow in March, 1958, Bakhshi Ghulam Mohammed is reported to have said :-

"He said that he was taking forward a certain programme and policy and would like to make an offer to Sheikh Abdullah too to join them in carrying out that programme and they would all be with him. Let him take the chair and we shall take the maiden (field)."

(ii) Replying to an address of welcome given by the Raipur Municipal Committee at a public meeting on the 15th of May, 1958, Bakhshi Sahib referring to my arrest (my second arrest took place on 29th April, 1958) is reported by an English Daily of New-Delhi "Indian Express" of 16th May, 1958, to have stated :-

"He had still high regard for Sheikh Abdullah and he did not like the idea of keeping him behind the bars. If he changes his outlook and once again works for his original ideals I will serve him again."

This gives lie direct to the prosecution charge that I had conspired since 9th August, 1953 upto 29th April, 1958, to overthrow the Government of Jammu and Kashmir or committed any other offence.

whatsoever.

12. With regard to the so called charge of facilitating the wrongful annexation of the territory of the State by Pakistan, I submit that I have fought since 1934 for securing the right of self determination for the people of Kashmir; have never compromised on this basic human right with any party or power and have willingly suffered innumerable hardships and imprisonments. Therefore, the charge is not only grotesque and preposterous but it contradicts what I have stood for and struggled since the inception of freedom movement in Kashmir. I have already quoted the Defence Minister of Government of India in my statement made under section 342 which it will be appropriate to repeat here. Addressing the Security Council in New York on February 8, 1957, he stated:-

- (i) " I challenge anyone to show me one phrase uttered anywhere by Sheikh Abdullah and he has now become the pet idol, although before he was called a quisling-I ask anyone to show me one phrase where he says he wants to become part of Pakistan." (Kashmir Vol. II. V.K. Krishna Menon's speech in the Security Council published by information service of India, New Delhi.)

The above categorical statement was made by no less a person than the Defence Minister of Government of India as leader of the Indian Delegation in the Security Council in 1957, when Kashmir Case was being debated before the World forum. It should be presumed that the Defence Minister is in the know of all the facts which concern the Security of his country. Moreover, this statement was made by him at a time when according to the contention of Counsel for prosecution the conspiracy had reached the maturing stage.

(ii) Bakhshi Ghulam Mohammed while addressing a public meeting in Banaras as late as 3rd April, 1961, is reported by a well known English Daily of New Delhi, 'The Statesman' of 4th April, 1961, to have said:

- " The two nation theory which was fashionable at one time, was not acceptable to Kashmir. Even Sheikh Mohammed Abdullah, who later gave the misguided slogan of Independent Kashmir, did not talk of Kashmir becoming part of Pakistan."

The only and inescapable conclusion that can be drawn from the above quotations is that both the charges of the Prosecution against the accused are a mere figment of their fertile imagination. They are ridiculous, baseless and utterly false, having no substance in them.

13. The learned Counsel for the Prosecution has made another onslaught upon me, charging me of betrayal of my ideals and objectives. On 5th April, 1961, he made a reference to "diverting that personality. This great personality is Sheikh Abdullah and change had come over him. He was diverted from one course to another." Again on 28th April, 1961, he stated:

" The prosecution case is that prior to 9th August, 1953, a change had come to Sheikh Sahib and what were his attitude and views in 1952, they were not in 1953."

I repudiate the charge with all the emphasis at my command. I always stood, and I now firmly stand for securing the right of self determination for the people of the State, irrespective of caste, creed, religion or region.

(a) On my release from prison during the 'Quit Kashmir Movement I told a mammoth gathering in Srinagar on 29th September 1947:

" If forty lacs of people living in Jammu and Kashmir are by-passed and the State declares its accession to India or Pakistan, I shall raise the banner of revolt and we face a struggle."

(b) On assuming the office of the Head of the Administration of the State, on 31st October 1947, i.e. hardly four days after the provisional accession of the State with India, I, in a special message, stated inter alia:

"The stipulation for the final acceptance of the Instrument of the accession is, that when the aggressor is driven out, peace again prevails and people of our country are really free, they will be given an opportunity to register their choice in the matter of accession or independence freely and without duress from anybody in and outside the State....."

While announcing these views I was hailed as a hero throughout India and proclaimed as a patriot of the highest order in the country. On the other hand Pakistan put a price on my head calling me a Quisling. It is an unkind twist of history that representatives of India now brand me as a traitor for expressing the self-same views. May I ask: Who has changed? Who has shifted the ground? I stand steadfast where I stood in 1947. At that time this right of the people was in danger when the raiders wished to make the sword as the final arbiter of people's destiny. I withstood that onslaught on the rights of the people of Kashmir with firmness and courage of conviction. The leaders and the Government of India were by my side, firmly supporting the same objective in Kashmir and we fought together the unforgettable battles which were common to us here on the soil of Kashmir as well as in the United Nations.

14-A.. Before proceeding further I would like to make two points clear. Firstly that the future of Kashmir is an International Problem and not an internal one of India as is wrongly held in some quarters. Therefore, any decision unilaterally taken in its behalf cannot be considered valid in International law nor can it be binding on the concerned parties. Secondly, the obligations and responsibilities under-taken in regard to Kashmir and the pledges given to her people were, as contended by the prosecution, not

".....the question of accession is to be decided finally in a free plebiscite...The only purpose for which the Indian Troops are operating in Kashmir is to ensure that the vote of the people will not be subjected to any coercion.

In support of the above assurance of India, there is to be no complete identity in the past, there is to be no a few excerpts from a speech of the Prime Minister of India, delivered in Parliament. The Government of India have no intention of depriving the people of Kashmir of their right to decide their future.

Addressing the Indian Parliament, the Prime Minister inter alia said: "The Government of India sent a message to the United Nations in which he said:

- (a) "It (Kashmir Problem) is an international problem. It would have been an international problem and our troops concerned any other nation besides India and it is its international character was further emphasized by the fact that a large number of other countries took an interest in the problem and gave advice".
- (b) "The question is before the nations of the World, whether they are united or not and whether they are a forum or not. It is an international matter and a matter which is in the minds of millions of men."
- (c) "We have tried to fashion our action in regard to the problem according to what we considered to be our obligations and responsibilities. What were those obligations and responsibilities? The first was to protect and safeguard the territory of India from every invasion. That is the Primary responsibility of the State. Secondly it was our duty to honour the pledge we gave to the people of Jammu and Kashmir State. And that pledge was a two-fold pledge. We were obliged to protect them from invasion and rape and loot and arson and everything that accompanied that invasion. That was the first part of the pledge. The second part of the pledge was given by us unilaterally and was to the effect that it would be for the people to decide finally what their future was to be. The third was to honour the assurances we gave to the United Nations. And the fourth was to work for a peaceful settlement."
- (d) "In the course of these years, I have repeatedly placed the situation before this House and it is with the support and concurrence of this House that we have continued to pursue the policy that we have pursued."
- (e) "As the House knows, we decided right at the beginning that we were agreeable to a plebiscite in which all the people of Jammu and Kashmir would take part."
- (f) "Among the assurances and pledges that we have given is the pledge which was implied in our policy, namely, that the people of Jammu and Kashmir State would decide their future. Let me be quite clear about this."
- (g) "I want to stress that it is only the people of Kashmir who can decide the future of Kashmir. It is not that we have merely said that to the United Nations and to the people of Kashmir. It is our conviction and one that is borne out by the policy we have pursued, not only in Kashmir but everywhere. Though these five years have meant a lot of trouble and expense and in spite of all we have done, we would willingly leave Kashmir if it was made clear to us that the people of Kashmir wanted us to go. However sad we may feel about leaving, we are not going to stay against the wishes of the people. We

" The prosecution case is that prior to 1953, a change had come to Sheikh at the time of his attitude and views in 1953."

I repudiate the charge that I would like to see the women of Kashmir at the United Nations command. I always stood, as a member of the Parliament, for the right of self determination to win people against their will and irrespective of caste and Kashmir State wish to part company with the people of Kashmir. (a) On my marriages, no forced unions."

Movement I told a member of the Government that I was resolved not to dishonour the pledges we made to the people of Kashmir or to the people of the world. Therefore, we shall pursue our policy according to the above excerpts give a very lucid and clear picture of the policy pursued by Government of India in regard to Kashmir from the beginning. This policy was also repeatedly made known to the world in their White Papers on Kashmir, in radio-broadcasts, Press Conferences, speeches and even in the communications that passed between the Prime Minister of India and the other important world dignitaries from time to time. The following are some among such numerous pronouncements.

" If for the above excerpts give a very lucid and clear picture of the policy pursued by Government of India in regard to Kashmir from the beginning. This policy was also repeatedly made known to the world in their White Papers on Kashmir, in radio-broadcasts, Press Conferences, speeches and even in the communications that passed between the Prime Minister of India and the other important world dignitaries from time to time. The following are some among such numerous pronouncements.

(i). On 25th October 1947, the Prime Minister of India in a telegram to the Prime Minister of United Kingdom, London, said:

"....., I should like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view which we have repeatedly made public is that the question of secession in any district, territory or State must be decided in accordance with the wishes of the people and we adhere to this view...."

(ii) Winding up his broadcast on 2nd November 1947 the Prime Minister of India announced:

"We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given and the Maharaja has supported it, not only to the people of Kashmir, but to the World. We will not, and cannot, back out of it."

"We are prepared when peace and law and order have been established to have a referendum held under the international auspices like the United Nations. We want it to be a fair and just reference to the people and we shall accept their verdict."

(iii) In her complaint before the Security Council India made it clear:

"In order to avoid any possible suggestion that India had taken advantage of the State's immediate peril, for her own political advantage the Dominion Government made it clear that once the soil of the State has been cleared of the invaders and normal conditions restored its people will be free to decide their future by the recognised democratic method of a plebiscite or referendum which in order to ensure complete impartiality, might be held under international auspices."

(iv) The Government of India's White Paper on Jammu and Kashmir, 1948, among other things mentions on page 45:

".....the question of accession is to be decided finally in a free plebiscite...The only purpose for which the Indian Troops are operating in Kashmir is to ensure that the vote of the people will not be subjected to coercion.....As Government of India have repeatedly made it clear, there is to be no victimisation of any native of the State whatever his political views or affiliations may be and no Kashmiri will be deprived of the right to vote."

(v) On 31st October 1947 Prime Minister of India sent a lengthy telegram to the Prime Minister of Pakistan in which he said:

"Our assurances that we will withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision about the future of the State to the people of the State is not merely a pledge to your Government but also to the people of Kashmir and to the World....."

(vi) The joint communique issued by the two Prime Ministers of India and Pakistan after having met in Delhi and discussed the dispute on Kashmir in detail on August 21, 1953 stated:

"It was their firm opinion that this dispute should be settled in accordance with the wishes of the people of that State, with a view to promote their well being and causing the least disturbance to the life of the people of the State. The most feasible method of ascertaining the wishes of the people was by a fair and impartial plebiscite."

(vii) On 25th November, 1947, the Prime Minister of India told the Constituent Assembly:

"We have gone to Kashmir to protect the people and as soon as this duty is discharged our forces need not remain there and we shall withdraw our forces....."

He further added:

".....In order to establish our bona-fides we have suggested that when the people are given the chance to decide their future this should be done under the supervision of an impartial tribunal such as the United Nations Organisation. The issue in Kashmir is whether violence and naked force should decide the future of the will of the people."

15. What is the position now? Who is availing the obligations and responsibilities undertaken with regard to Kashmir? And finally may I ask who is dishonouring the pledges given to the people of Kashmir? The Prime Minister of India, contrary to his numerous earlier commitments, some of which I have quoted above, now proclaims to the world that the Kashmir problem has become petrified for the last 12 years and the people there have almost forgotten it. There is stability and the people have already gone through two general elections. Therefore, no attempt should be made to disturb the present status-quo. Thus, ^{he} people now told that what the 'naked force' has achieved should be accepted as the decision in the dispute and not the "will of the people."

I do not want here to go into the claim regarding the so called stability nor into the fraudulent character of the general election which is advanced obviously as a plea for wriggling out from the earlier commitments. I am sure that the World opinion will not be easily misled by such wishful claims. I, however, hold that the stand now taken, in clear violation of numerous earlier pledges, is no less an onslaught on the fundamental rights of the people of Kashmir than that of 1947. I shall resist it with the same firmness and courage of conviction as I did in 1947. I have no doubt in my mind that the people of the State will never rest content until the exercise of this birth right is secured for them.

16. I am not interested in a personal defence and I would not have stated even what I have stated if I had not felt that my trial is something far more than a personal charge against me. It is in effect a trial of entire population of Jammu and Kashmir, even though some of them being content with their transient personal interests or out of fear, may not be prepared to recognise or openly declare so.

17. When law is not based on the will of the people, it can lend itself to the suppression of their aspirations. Such law has no moral validity even though it may be enforced for a while. There is a law higher than that, the law that represents the people's will and secures their well being, and there is a Tribunal of human conscience which judges the rulers and the ruled alike by standards which do not change by the arbitrary will of the most powerful. To that law I gladly submit and that Tribunal I shall face with confidence and without fear, leaving it to history and posterity to pronounce their verdict on the claims I have made on behalf of the four million people of the State.

18. It is a small matter as to what happens to me. But it is a small matter that the people of Jammu and Kashmir suffer poverty, humiliation and degradation. It has been no small matter what they have endured for more than a decade and what they are enduring now. Infact the State has become a vast prison camp where the people are governed by heinous laws and monstrous ordinances some of which entail death sentence while others provide imprisonment for ten years without making it incumbent on the executive authority even to apprise the victim of the charge, not to say of a judicial trial. Hundreds of Kashmiris have suffered incarceration for years since 9th August 1953 under these lawless laws; many were shot by the Army and the Police; hundreds were maimed and disabled for life; hundreds again were involved in fictitious criminal cases in order to silence their voice, and yet it is claimed that there is stability! Be that as it may, these very events have demonstrated the justice of the demand for the immediate implementation of the pledge of the plebiscite given to the people by India, Pakistan and United Nations. The people of the State have not forgotten it and will never forget it.

19. If my imprisonment serves the cause to which I have dedicated myself, then it will be well with me and I shall take pride in thus serving my people and the land of my forefathers. My voice may be stifled behind the prison walls but it will continue to echo and ring for all times to come. It can never be stopped. It is the voice of human conscience; it is the voice of the people. I am only a symbol of people's undeniable aspirations and rights. What I am saying now will be repeated time and again, and it will go down in history.

20. Kashmir is dear to us because of its beauty and past traditions which are common to all who inhabit this land. But it is the future that calls to us and for which we labour; a future that will be the common heritage of all and in which we as free men and women will build the Kashmir of our dreams. Then only shall we be worthy of the land we dwell in.

Special Jail, Jammu.
Dated, 28th June, 1961.

Sd/- (SHEIKH MOHD. ABDULLAH)

ISSUED BY
J&K LEGAL DEFENCE COMMITTEE,
JAMMU.

KASHMIR CONSPIRACY CASE FURTHER ADJOURNED
ACCUSED NOT BROUGHT FROM SRINAGAR.

A large number of press correspondents and followers and friends of Sheikh Abdullah had come to the court, as it had been given out that the magistrate would announce the order, he has to make in the Conspiracy Case. The three accused on bail, who had been required on last hearing to be presented, had also come from Srinagar.

The magistrate enquired if anyone in the court knew why the accused under detention in Srinagar had not been brought. On this Mr. Mubarak Shah, Defence Counsel, remarked: "How can we know why they have not been produced today. I had made enquiries at Srinagar and was told that no orders for their removal to Jammu had been received."

The magistrate replied that one accused had applied to him praying that he should be kept at Srinagar where his health had improved.

Defence Counsel: Should it, therefore, be understood that that is the reason for the non-production of the accused today?

Magistrate: Obviously not, but I will make enquiries.

Defence Counsel: I would request you to make this enquiry also how gravely the ailing three accused have suffered on account of having to move to Jammu. One of them, Mr. Hamdani, has come from his sick bed, to be told here that the hearing is adjourned. They have been reduced to destitutes for the last 3½ years and still this phase is not put an end to. I say this with full sense of responsibility that these dilatory tactics are employed for other purposes. The prosecution want the order to be pronounced when it suits their interests. Should a law court be made sub-servient to the interests and purposes of executive? I submit, Sir, that no government however mighty it be, can be considered above law and no authority can be made immune from facing and meeting ends of justice. Is it just to keep us in agony? No-where court of law allows such a free hand to government to play with the liberties of the citizens. I hold prosecution, which is government, responsible for this.

The magistrate then remarked that among the accused there were two sets, one of those who were in Kashmir on account of being accused in Hazratbal Case, another of those who had been sent there by this court for temporary detention. He had written to court for the return of the former and to Superintendent Jail, for sending back the latter.

Defence Counsel: It looks strange that neither of them have complied with the orders of this court. Either they have no orders or they have not complied with them. It has happened as it suits the prosecution.

Magistrate: I will make enquiries.

Defence Counsel: I hope enquiry will pertain also to the connivance of the prosecution. May I remind you what happened in January last. The accused were taken to Srinagar for starting trial in Hazratbal Case. They were not allowed to stay there beyond a few days when the prosecution brought them back here, in spite of their protests. They were kept here for no purpose, though by their presence at Srinagar, no excuse would have remained for not standing the trial of that case. It suited the prosecution to bring them here then. Now it does not suit them to bring the accused for today's proceedings. It is to be wondered how long will a court entrusted to do justice allow this?

Magistrate: I will make enquiries.

Sheikh Mohd. Abdullah: (in Urdu) May I say a word or two. First of all I offer you congratulations for the extension of your post to new year. Last time I had been assured by you that you would make your order this year. Now new year is very near and you have received extension of your appointment, while we continue to be subjected to this treatment for the last more than 32 years. Should this be understood that the extension of your post means that this matter should also enter the year 1962? The other accused had been taken to Srinagar 5 months ago and it was said for expediting the trial of Hazratbal Case. Nothing happened or is happening in that case; and now they are not even brought back to observe the formality of their presence to hear your order. I wonder what keeps you back in reading out your order. Why would there be so much agony? If you are not convinced that any prima-facie case is made out, well/bold to discharge us. Or even if you have to charge us, please do. Let us have this matter done with. It has now become a big joke, not only for us but also for the entire judicial system of India. It is a blot on democracy and rule of law in India. Has human conscience become so dead - I ask. Had you used the powers you have got to do justice, I am sure the matter would not have delayed so long.

Magistrate: I do not want to argue. But I am more anxious than you are to expedite this case. I would have been a Sessions Judge by now but for my being engaged in this case.

Sheikh Abdullah: Why should you not tell so to the government?

Magistrate: We should take the things as they are. Anyway I have sent the letters to Superintendent Jail and Sessions Judge on 7th December. When the time came very near and the accused were not brought I made enquiries.

Sheikh Abdullah: It was very easy to enquire by telephoning the concerned.

Magistrate: The telephone was out of order i.e. the Srinagar line was off.

Sheikh Abdullah: All these 15 days?

Magistrate: No, only a few days back when I made enquiries. I will make enquiries why accused have not been brought to-day.

Sheikh Saheb: You could have enquired earlier.

Magistrate: But I had information that they would be brought here.

Sheikh Saheb: Now you find that is not so. We had expected drop-~~some~~ to this stage-managed affair, now going on for the last 32 years. On the last hearing somebody here told me that nothing would happen in 1961. That has come true. Now we are entering 1962.

Court: Now I will take interest and see that the accused are here on the next hearing.

Sheikh Saheb: That is good. But you must be careful about your health also which often fails.

Court: I can say that is only personal matter.

Sheikh Saheb: But unfortunately that has often delayed the matter.

Mr. Panday: (Prosecution Counsel) Sir, my learned friend

the Defence Counsel - has alleged that the Prosecution is responsible for this delay. That is not a fact. I deny this.

Mr. Mubarak Shah: Sir, I can substantiate that it is with a purpose that no orders were announced to-day and the hearing adjourned. Court: But which is the next date for the hearing of the Bomb Case?

Mr. Mubarak Shah: That does not concern us. I have no information. But the learned Public Prosecutor has said that the accused in that case have applied for transfer of the case and stay of proceedings.

Sheikh Saheb: That case is kept in cold storage for the present. Hazratbal Case hearing is fixed for 10th January 1962, So that case has already gone over to the next year.

Mir Ghulam Rasool: So we have to follow.

Court: Sometimes it is dangerous to follow.

Mir Ghulam Rasool: Then let us lead.

Court: What should be the next date, Mr. Shah?

Mr. Mubarak Shah: Let it be to-morrow if you like.

Court: It is impossible.

Mir Ghulam Rasool: It is for the court to see as to when the other accused can be brought here. I think it can be possible within 3 or 4 days. Let the hearing be adjourned for 4 days.

Sheikh Saheb: 18th December would be better. 4 days are more than enough for the accused to be brought here if that is the policy.

Court: But we have to look into the date of hearing of Bomb Case.

Mr. Mubarak Shah: Why should we feel bound by dates in that case? Should that be allowed to be another clog? The prosecution plea is not that the date be fixed in view of that.

Mr. R.K. Kaul (Pros. Counsel): Sir, the last date of Bomb Case was 9th December. I have no idea about the next date. The Bomb Case is not in cold-storage as stated by Sheikh Saheb.

Mir. Ghulam Rasool: Sir, let us adjourn today. You can make enquiries and we will assemble tomorrow when you can fix a definite date for ending this phase.

Mr. Mubarak Shah: Only one accused is involved in Bomb Case. You may fix a nearer date. At the most only one accused will be absent, if proceedings in that case will start.

Court: But I do not want that any such difficulty should arise. I think the next date should be 26th or 27th December.

Mr. Mubarak Shah: That would be too long a date.

Court: One should be on the safer side.

The Magistrate then announced that he had fixed 27th December, as the next date of hearing.

Issued by

Defence Counsel & Secretary (Publicity)
J&K Legal Defence Committee, Jammu Tawi.

December 14, 1961.

For information and favour of publication.
Mridula Samthar
Mridula Samthar.

December 28, 1961

SALIENT FEATURES OF THE KASHMIR CONSPIRACY CASE

M i l e s t o n e s

- Jammu & Kashmir Inspector General of Police seeks Govt. permission to prosecute 30 persons. ... 16th May, 1958
- By Govt. order No. IS 183/58 permission given to prefer complaint under Sec. 196 of the Code of Cr. Procedure and Sec. 121-A of the RPC against 25 persons. ... May 17, 1958
- Govt. order No 31-P/58 appointing Shri N.K. Hak as Spl. Magistrate conferring all the powers of a 1st Class Magistrate to be exercised throughout the State of Jammu & Kashmir. ... May 17, 1958
- J&K State IG of Police's complaint filed in the Court. ... May 21, 1958
- Period of conspiracy during which the alleged offences in pursuance of the conspiracy were being committed as per complaint, vide Govt. order No. IS-183 of 1958. "Between 9th August 1953 to ... 29th April, 1958".
- (Period covered in ^{this} from Sheikh Abdullah Govt.'s dismissal and his detention on 9th August, 1953 to 29th April, 1958, including his short interim release from 8th January, 1958, to his redetention on 29th April, 1958)
- Complaint for the alleged commission of offences ... Under Sec. 121-A and 120-B of R.P. Code read with Rule 32 of the J&K Security Rule of 1996.
- First session of the Special Magistrate's Inquiry Court ... June 11, 1958.
- Court protection sought against police torture.
5. Kh. G.M. Chikkan
13. Pir Abdul Ghani
14. Mir Mohd. Nazir
- make oral statement to the court against the Interrogation Centre at Srinagar manned by personnel of Intelligence Bureau of India subjecting them to 3rd degree methods in order to extort confessions, they seek Court's protection and also pray for an enquiry ... June 11, 1958
3. Kh. Ali Shah, files a similar complaint ... June 11, 1958.
- Court order.
- prosecution says application does not disclose under what provision of law it has been filed Therefore, rejected and it is not possible to record any oral statement. The authorities can, if they choose approach the autho-

rities concernedit is admitted that all this pertains to the period when the under-trials were not in the custody of this court

Applications for the Change of Venue:

11.6.1958

Final Order of the Special Magistrate:

25.7.1958

3. Inter-locked with Kashmir Conspiracy Case through -

1. State v/s Gh. Qadir & ors. popularly known as Hazratbal Riot & Murder Case

(a) common accused:

(b) evidence of one case forms part of evidence in the other etc.

Common accused from Hazratbal case under-trials:

1. Kh. Ali Shah
2. Mirza G. Qadir Beg
3. Kh. G.M. Chikkan
4. Sofi Mohd. Akbar
5. Pir M.M. Yalgami
6. Kh. Gh. M. Hamdani
7. Kh. Mohyuddin Shah

FIR 25 of 1958 of Police Station Sad under Secs. 307, 398 435, 336, 452, 332, 120/B, 148 and 141, RPC on 21.2.1958. Case filed on March 8, 1958 against 86 in the court of the Special Magistrate Mr. N.K. Ganjoo, Srinagar. Committee to Sessions on 20th Oct., 1958 and since then pending.

Common accused from Bomb case:

1. Mr. Mohyuddin Shawl

2. State v/s Rahman Shagoo & Ors. popularly known as Bomb Case Instituted on 5th Oct. 1957, under Sec 3 of Enemy Agents Ordinance, S. 3, 4, and 6 Explosives Act, S. 120-B S-29/32 Public Security Rules. 9 persons involved.

Total adjournment period of Kashmir Conspiracy Case on account of non-availability of common accused.

197 days in 3 years

Prosecution presents to the Court provisional List of Prosecution witnesses;

June 27, 1958

Govt. order No. 18/157 of 1958 granting permission to prosecute Sheikh Abdullah for offences under Sec. 121-A of RPC who was under detention since 29th April, 1958.

Oct. 18, 1958

IC of Police files complaint against Sheikh Abdullah in Spl. Magistrate Mr. N.K. Hak's Court.

Oct. 23, 1958

Sheikh Abdullah produced before the court.

Oct. 23, 1958

Defence protest against inclusion of Sheikh Abdullah.

Nov. 29, 1958

* These two cases are conducted in Srinagar. Kashmir Conspiracy Case first in Kud and later in Jammu at a distance of 200 miles. results in the shuttling of the common accused between Jammu and Srinagar. Dates of hearing are so timed as to cause suspension of proceedings in all these three cases.

Prosecution Counsel's Opening address:	March 14, 1959
Prosecution submits a list of 153 Co-conspirators:	March 27, 1959
Prosecution evidence	March 27, '59 to June 17, 1960.
Examination of under-trials u/s 342 Cr.P.C.	Aug. 8, 1960 to March 6, 1961
Prosecution arguments	March 27 to May 1, 1961
Defence arguments	May 10 to June 1961.
Reply of Prosecution	July 5 to July 11, 1961.
Date of final order	Not fixed

Court now assembles about every fortnight to hear miscellaneous matters.

Total time taken upto Dec. 15, 1961. About 3 years 7 months.

FIR said to have been lodged on 9th Oct, 1957 which disclosed to the authorities the instance of the conspiracy, its objects and means to achieve them. It has not been as yet produced in the court.

Encls:

1. Adjournments.
2. Period of Jail Life
3. Prosecution Witnesses

December 15, 1961

Issued By:
J&K LEGAL DEFENCE COMMITTEE.

For information and favour of publication.

Mridula Sarabhai
Mridula Sarabhai
for Defence Counsel & Secretary (Publicity)
Jammu & Kashmir Legal Defence Committee.
27.12.1961

A D J O U R N M E N T S

From 11.6.1958 to 11.7.1961
and upto 21st December
1961.

"...The prosecution deliberately secured adjournment after adjournment. The break down of communication between Srinagar and Jammu, absence of witnesses and the engagement of one of the accused in the Kashmir Bomb Case were some of the excuses usually advanced by the prosecution to get these adjournments from the court..." (Sheikh Mohd. Abdullah in his oral statement before the court on 11.8.1960)

Due to:

Prosecution:

Due to difference of venue and inter-locked cases:

a) Hazratbal Case: 105 days
b) Bomb Case: 88 days

Warrants not served: 14 days
Witnesses not available: 17 days

Miscellaneous (including reasons not known): 55 days

Inquiry Court: 114 days
Sessions Court: 16 days
High Court: 81 days
Defence: 80 days
Mutually agreed: 40 days

Total: 610 days

Minus days under common headings: 41 days

Total: 569 days

On 11th July 1961 the Court adjourned for writing of final order. It meets every fortnight for a few hours to dispose off miscellaneous matters. 14th December 1961 was fixed for the orders; later postponed to 27th December due to non-production of some of the accused on that date. Total period since 11th July 1961:

5 months 16

Grand total of adjournments upto 21st December '61: 2 years & 8

Total time taken so far in inquiry proceedings: 3½ years.

- Note: 1) The above figures belie the impression created that accused were responsible for the delays. The defence can be considered responsible only for the heads 'Defence' and 'Mutually Agreed'.
- 2) The period lost in proceedings in Sessions Court and High Court cannot be attributed to the Defence because causes for driving the accused to higher courts lie somewhere else.
- 3) It should be remembered that prosecuting authority in the Kashmir Conspiracy Case, Hazratbal Case and the Bomb Case is the same - the State Government - even though prosecuting agencies in the three cases might be different.

= 5 =

PERIOD OF JAIL LIFE OF THE UNDERTRIALS

(upto Dec. 1961)

Name	Period of detention prior to being produced as 'accused'	As undertrial since June 1958	Total period of jail life since August 1958
1. Sheikh Mohd. Abdullah	4 years 11 months	3 years 2 months	8 years 1 month*
2. Mirza Mohd. Afzal Beg	3 years 9 months	3 years 6 months	7 years 3 months*
3. Soofi Mohd. Akbar	2 years 1 1/2 months	3 years 6 months	5 years 7 1/2 months
4. Kh. Ali Shah	2 years 9 months	3 years 6 months	6 years 3 months
5. Kh. G. M. Chikkan	2 years	3 years 6 months	5 years 6 months
6. Mir Ghulam Rasool	-	1 year 1 month	1 year 1 month
7. Kh. Mohammed Amin	-	1 year	1 year
8. Mr. Mohiuddin Shauk	(for 10 months undertrial in Bomb Case)	3 years 6 months	4 years 4 months
9. Kh. G. M. Hamdani	-	1 year 1 month	1 year 1 month
10. Pir ibdul Ghani	3 years 9 months	3 years 6 months	7 years 3 months
11. Mir Mohammed Nazir	1 year 6 months	3 years 6 months	5 years
12. Mirza Ghulam Qadir Beg	-	3 years 6 months	3 years 6 months
13. Kh. Mohiuddin Shah	-	3 years 6 months	3 years 6 months
14. Pir Mohd. Magbool Yalgami	1 year 9 months	3 years 6 months	5 years 3 months
15. Pir Mohd. Afzal Makhdoomi	3 years 5 months	3 years 6 months	6 years 11 months

* Released for a short period from 8th January to 29th April 1958.

† Released on medical grounds towards the end of November 1954 and re-detained in the middle of November 1955. Again released for 6 days in 1956.

NOTES: 1. From June to December 1958 all undertrials also continued to be under Preventive Detention Act.
2. Nos. 3, 6, 7 and 9 have now and then been released on bail on medical grounds.
3. Except for Nos. 6 and 11, the rest have often been detained and released since 9th August 1958.

.....

(Approximate calculations)

PROSECUTION WITNESSES

"The prosecution witnesses are ex-facie partisans and have been suborned by intimidations and heavy bribes. Most of them were harassed and tutored at Srinagar, then brought over to Jammu and subjected to repeated processes of brain-washing. The prosecution witness Choudhary Abdur Rahim's statement on oath, before Your Honour, is a typical example of how the evidence has been secured. As regards the torture exacted in the Central Intelligence Bureau in order to extort 'confessions' for corroborating the police story, I beg to refer to the detailed written statements filed by Kh. Ali Shah, Kh. Ghulam Mohammed Chikana, Pirm Abdul Ghani and Mir Mohammed Nazir. These four accused are distinguished public men, who were respectively, a Deputy Minister, a Deputy Commissioner, a member of a local body and an officer of the Public Works Department. The humiliation, disgrace and vulgar abuses hurled at them in the Interrogation Centre would shame any decent Government. Where a highly educated, respectable citizen and a Deputy Commissioner of the State is threatened that urine will be poured into his mouth if he does not sign on the dotted line, to what lengths would not the authorities in charge of this case go in order to secure witness and evidence for this case? I leave it to you, Sir, and any fair-minded person to arrive at a just conclusion.

"Amongst the prosecution witnesses, a large proportion consists of accomplices, agent-provocateurs, stock witnesses and chance witnesses. Most of the evidence is hearsay and otherwise also inadmissible as well as highly improbable and unnatural. A careful perusal of the complaint and the tailored evidence gives an inescapable impression that this multi-purpose prosecution is planned to try Pakistan, convict us, condemn Security Council and sentence Kashmir.

"That the main instrument has been brain-washing, indoctrination of the witnesses, fabrication of documents, fabrication of police records, destruction of records that might help the accused. Not only witnesses like Japanese prisoners, prisoners of Great War, were herded from Srinagar to this place for brain-washing and then shadowing by police and intelligence officers of the Government of India right up to the witness box and if anything remained that was made up during the examination of a witness by gestures, by hints, by express words, by leading questions of which the record is full. Witnesses were threatened while in the witness box to say or not to say a particular thing. You will find a record in support of our protestations to this effect in your file and during intervals, if a witness has by slip spoken a truth, during interval he was briefed and set right, after the interval when the examination was resumed."

(Mirza Mohd. Afzal Beg in his written statement u/s 342)

Total number of Prosecution Witnesses as per list submitted by the prosecution:	303
---	-----

Number of prosecution witnesses examined by the Enquiry Court:	226
--	-----

Break-up of the prosecution witnesses:

a) Employees of the State Police:	55
b) Employees of the State Government:	52
c) Employees of Indian Police:	16
d) Employees of the Indian Army:	11
e) Members of the ruling party:	17
f) State Government pensioners:	11
g) Alleged accomplices:	27
h) Main informers:	27
i) Others:	10

Prosecution witnesses declared hostile;
Total time taken in their evidence;
Adjournments during this period;
Actual time taken;

Chaudhri Sadat Rahim
15 months
5 months
10 months

.....

Issued By:

Jammu & Kashmir Legal Defence Committee.

CHARGE SHEET AGAINST SHEIKH MOHAMMED ABDULLAH, ACCUSED

Offence under Rule 32, J&K Security Rules, 1996

Addl.
I, M.K. Tikoo, Sessions Judge, Jammu, charge you, Sheikh Mohammed Abdullah s/o Sheikh Ibrahim r/o Spwra, Srinagar, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under clause 6, rule 28 of J&K Security Rules of 1996.

1) You delivered speeches, details of which are given below which amount to prejudicial acts falling under various sub-clauses of clause 6 of Rule 28 of the J&K Security Rules, 1996, as shown below. They are punishable under Rule 32 of the said Rules:

<u>Sl.No.</u>	<u>Date</u>	<u>Place</u>	<u>Exhibits</u>	<u>Clauses contra-vened</u>
1.	13.1.58	Hazratbal	P.269, P.269/1	a and d.
2.	17.1.58	Hazratbal	P.269A, P.269A/1	a, d and m
3.	31.1.58	Hazratbal	P.269B, P.269B/1, PM 1, PM 2, P.273, P.273/1	a, d, f and m.
4.	7.2.58	Jama Masjid Srinagar	P.269C, P.269C/1 PM/1 to 3, P.273A, P.273 A/1	a, d and m.
5.	16.2.58	Hazratbal	P.269E, P.269E/1 PO/1 to 3, P.273B, P.273B/1	d
6.	21.2.58	Hazratbal	P.269D, P.269D/1, pP-1 to 2, P.273C, P.273C/1.	a, d and m.
7.	28.2.58	Hazratbal	P.269E, P.269F/1	a, d and m
8.	2.3.58	Karalakhud, Srinagar	P.269G, P.269G/1	d

The probable effect of your speech dated 21.2.58 at Hazratbal, Srinagar, was that the riot would have taken a serious turn. In fact it was so and as a result of it Mohiuddin Banday was murdered and many other persons were injured. Looting and burning took place and government property etc. was damaged.

In the years 1956 and 1957 when you were under detention in Kud jail you dictated and sent circular letters on various dates. Copies of these are the following:

<u>S.No.</u>	<u>Exhibit No.</u>	<u>Date.</u>	<u>Clauses contravened</u>
1.	P.72 C	May, 1957	d and m
2.	P.72 F	2nd March 1957	d and m
3.	P.72 I	24th Jan. 1957	d
4.	P.72 N	28th Nov. 1956	d and m
5.	P.72 O	17th Nov. 1956	d and m
6.	P.72 P	12th Nov. 1956	d and m

They are entered in copy book Exhibit P.72 and amount to prejudicial acts as shown against each above. They fall under clause 6 of Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Rules.

3) You held meetings in your house at Sowra, Srinagar, in the period between January 1958 and 29th April, 1958. In these meetings you instigated the workers of the Plebiscite Front to overthrow the Government of Jammu & Kashmir in order that wrongful accession of the J&K State by Pakistan may be facilitated. And to achieve this objective you pressed for the recruitment of volunteers who were imparted training for the use of arms and explosive material. And these acts fall under the definition of prejudicial acts named under sub-clause m, clause 6, Rule 28 of J&K Security Rules 1996, which are punishable under Rule 32 of the said Rules.

4) When you were under detention in Tara Niwas Jail, Udhampur, from 9.8.53 to 6.5.54 and in Additional Subsidiary Jail, Kud, from 6.5.54 to 8.1.58, you were guiding and encouraging the activities of War Council and Plebiscite Front whose aims and objectives were to overthrow the government of J&K and to facilitate the wrongful annexation of the State with Pakistan, your acts were to prejudice the State's relation with India, to prejudice the maintenance of peaceful conditions in the State, bring into hatred and contempt and excite disaffection towards the government established by law in the State; to promote feelings of enmity and hatred between different classes of the State subjects; to cause fear and alarm to the public or any section of the public and to instigate or excite directly or indirectly the commission or abetment of offences punishable under Sec.121 of the RPC. These acts amount to prejudicial acts which fall under sub-clauses a, d, f, g and m of clause 6, Rule 28 of J&K Security Rules, 1996 and are punishable under Rule 32 of the above Security Rules.

5) That during the period of the conspiracy, charge-sheet which has been read over to you, towards its pursuance and furtherance you induced secretly bringing of arms, ammunition and explosives into the State of Jammu and Kashmir so that fear and alarm may be caused among the public and the peaceful conditions of the State be upset. You were instigating the commission and abetment of offences punishable under Sec.121 RPC. These acts of yours amount to prejudicial acts which attract sub-clauses a, g and m of clause 6 of Rule 28 of J&K Security Rules, 1996 and are punishable under Rule 32 of the said Security Rules.

6) That during the period of the said conspiracy, charge-sheet of which has been read over to you, towards its pursuance and furtherance, you established contacts and correspondence with the Pakistani co-conspirators and also secured financial assistance from Pakistan in order to prejudice State's relations and to upset the peaceful conditions in the State and to cause fear and alarm to the public or to any section of the public. You instigated directly or indirectly the commission or abetment of offences punishable under Sec.121 of RPC. These acts of yours amount to prejudicial acts which fall under sub-clauses a, d, f, g and m of clause 6 of Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

I order that I will hold trial for the charges mentioned above.

Draft of the proposed amendment of the charges

CHARGE-SHEET AGAINST MIRZA MOHAMMED AFZAL BEG, ACCUSED

Offence under Rule 32, J&K Security Rules, 1996

I, M.K. Tikoo, Addl. Sessions Judge, Jammu, charge you -
Mirza Mohammed Afzal Beg s/o Nizamuddin, r/o Sarnal, Anantnag,
Kashmir, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under clause 6 of Rule 28, J&K Security Rules, 1996.

1. That in the end of July, 1955, or in the beginning of August, 1955, you together with some other accused, secured from Pakistan co-conspirators at the house of Mirza Ghulam Mohd. Beg in Anantnag, help in order to overthrow the government of Jammu & Kashmir established by law. This act amounts to prejudicial acts which fall under sub-clauses a and m of clause 6, Rule 28 of J&K Security Rules and are punishable under Rule 32 of the said Security Rules.

2. That during the period of the said conspiracy, charge-sheet of which has been read over to you, you while under detention and out of it were guiding and encouraging the activities of War Council and Plebiscite Front, founded by you. Their aims and objectives were to overthrow the Government of J&K and to facilitate the wrongful annexation of the State of J&K by Pakistan, to prejudice State's relations with India, to prejudice the maintenance of peaceful conditions in the State; to bring into hatred and contempt and create disaffection towards the government established by law in the State; to promote feelings of enmity and hatred between different classes of the State subjects; to cause fear and alarm to the public or any section of the public and to instigate or incite directly or indirectly the commission or abetment of offences punishable u/s 121 RPC. These acts amount to prejudicial acts which fall under sub-clauses (a), (d), (g) and (m) of clause 6 of Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the above Security Rules.

3. That in August, 1955, in a meeting at Srinagar held in the house of Ghulam Mohammed Butt alias Gulla Reda, situated at Basant Bagh, which was participated by Sajawal Khan, absconding accused, Kh. Ali Shah, Sofi Mohd. Akbar, Pir Mohd. Maqbool Vilgami, accused, and other accused and some others asked Pakistan's help in the form of money, materials and explosives so as to achieve the objective of the aforesaid conspiracy; and in order to arouse contempt, hatred against and create disaffection towards the government of J&K State; to promote feelings of enmity and hatred between different classes of the State subjects; and to cause fear and alarm to the public or any section of the public so that the State's relations with India may be prejudiced and directly or indirectly instigation may be given for the commission or abetment of offences u/s 121 RPS. These fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6 of Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

4. That during the period of the said conspiracy, charge-sheet of which has been read over to you, you established contacts and corresponded with Pakistan co-conspirators, secured financial assistance and assistance of other materials from Pakistan so that the relations of J&K State with India may be prejudiced, peace of

the State may be disturbed, fear and alarm may be caused in the public or a section of the public, feelings of contempt, hatred against and disaffection towards the government be created, hatred and enmity among various parties of the State may be promoted, directly or indirectly instigated the commission and abetment of offences under Sec. 121 RPC. These fall under sub-clauses (a), (d), (f) (g) and (m) of clause 6 of Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

5. That during the period of the said conspiracy, charge-sheet of which has been read over to you, you abetted bringing into the State of arms, ammunition and explosive matter in pursuance of done and for the furtherance of the conspiracy. This was to create alarm and fear among the people and to disturb the peaceful condition of the State. The commission and abetment of offences u/s 121 RPC were being instigated by you. These acts of yours amount to prejudicial acts which fall under sub-clauses (a) (g) and (m) of clause 6 of Rule 28, J&K Security Rules, 1996, and are punishable under rule 32 of the said Security Rules.

Therefore, I order that I will hold trial for the charges mentioned above.

CHARGE-SHEET AGAINST SOFI MOHAMMED AKBAR, ACCUSED
Offence under Rule 32, J&K Security Rules, 1996

I, M.K.Tikoo, Addl. Sessions Judge, Jammu, charge you, Sofi Mohammed Akbar s/o Sofi Asadullah, r/o Sopore, Distt. Baramulla, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts, which fall under clause 6, Rule 28 of J&K Security Rules of 1996.

1. That you along with some other accused, secured from Pakistani co-conspirators at the house of Mirza Ghulam Mohammed Beg, situated at Anantnag towards the end of July 1955 or in the beginning of August, 1955, assistance in order to overthrow the Government of Jammu & Kashmir State, established by law. This amounts to prejudicial acts which fall under sub-clauses (a) and (m) of clause 6, Rule 28, J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

2. That in August, 1955, you in a meeting at Srinagar held at the house of Ghulam Mohd. Butt alias Gulla Reda, situated at Basant Bagh and which was participated by Sajawal Khan, absconding accused, Kh. Ali Shah, Pir Mohd. Maqbool Vilgami, Mirza Mohd. Afzal Beg and other accused, asked Pakistan to help in the form of money, material and explosives in order to achieve the objective of the said conspiracy and in order to instigate contempt, hatred against and disaffection towards the Government of J&K State, to promote feelings of enmity and hatred between different classes of the State subjects, to cause fear and alarm to the public or a section of the public so that the State's relations with India may be prejudiced and directly or indirectly instigation may be given for the commission or abetment of offences u/s 121 RPC. They fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

3. That during the period of this conspiracy, charge-sheet of which has been read over to you, you while under detention and outside, guided and encouraged the activities of the War Council and the Plebiscite Front whose aims and objectives were to overthrow the Government of J&K and to facilitate the wrong annexation of J&K State by Pakistan. This was to prejudice State's relations with India, to prejudice the maintenance of peaceful conditions in the State, to bring into hatred and contempt and disaffection the government established by law in the State, to promote feelings of enmity and hatred between different classes of the State subjects, to cause fear and alarm to the public or any section of the public and to instigate or incite, directly or indirectly the commission or abetment of offences u/s 121 RPC. And for this you took part in propaganda campaign. These acts of yours amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

4. That during the period of the conspiracy, charge-sheet of which has been read over to you, you maintained contacts and correspondence with Pakistani co-conspirators and also secured assistance of means and material from Pakistan with the object to pre-

judice the maintenance of peace in the State, and to cause fear and alarm to the public or any section of the public and to create hatred, contempt and disaffection towards the government, to promote feelings of enmity and hatred between different classes of the State. You instigated directly or indirectly the commission or abetment of offences under Sec.121 RPC which amounts to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28, J&K Security Rules, 1996. They are punished under Rule 32 of the said Security Rules.

5. That in furtherance of this conspiracy you together with other accused in the case, M/s. 1. Kh. Ali Shah, 2. Mohiuddin Shah, 3. Ghulam Mohiuddin Hamdani, 4. Pir Mohd. Maqbool Vilgami, 5. Ghulam Mohd. Chikkan, 6. Ghulam Qadir Beg and others, formed an unlawful assembly and committed the offences of burning, looting and killing at Hazratbal and Raj Bagh, Srinagar, on 21.2.58. The result was that one Mohiuddin Banday was killed, many other persons got grievous and simple hurts and property was looted, destroyed and damaged. These acts are prejudicial acts and fall under sub-clauses (a), (d) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996.

Therefore, I order that I will hold trial for the charges mentioned above.

Draft of the proposed amendment of the charges.

CHARGE-SHEET AGAINST KH. ALI SHAH, ACCUSED

Offence under Rule 32, J&K Security Rules,
1996.

I, M.K.Tikoo, Additional Sessions Judge, Jammu, charge you, Kh. Ali Shah, s/o Ahmed Shah, r/o Bagh Magharmal, Srinagar, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under clause 6 of Rule 28, J&K Security Rules, 1996.

1. That during the conspiracy the charge-sheet of which has been read over to you, while under detention and out of it, you were guiding and encouraging the activities of the War Council and Plebiscite Front, whose aims and objects were to overthrow the Government of J&K and to facilitate the wrongful accession of the J&K State by Pakistan. This amounts to prejudicing the relations of the State with India, to prejudicing the maintenance of peaceful conditions in the State, to spreading hatred and enmity against and disaffection towards the Government of the State established by law, to promoting feelings of enmity and hatred between different classes of the State subjects, to causing alarm and fear among the public or any section of the public and to instigating directly or indirectly the commission or abetment of the offences punishable under Sec.121 RPC. These acts of yours amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6 Rule 28 of J&K Security Rules, 1996, which are punishable under Rule 32 of the above Security Rules.

2. That you, during the period of conspiracy, the charge-sheet of which has been read over to you, in pursuance and furtherance of conspiracy, carried against the government the campaign of writing, publishing and circulating posters and pamphlets. Out of these some which had been received from Pakistan, included prejudicial matter and had been issued in the name of War Council or Plebiscite Front so that the peaceful conditions in the State be disrupted, feelings of enmity and hatred among different classes of the State be created and contempt, hatred against and disaffection towards the Government be created, the relations of the State with India be prejudiced, and fear and alarm amongst the people or some section of the public be caused and the commission or abetment of the offences punishable under Sec.121 RPC be instigated or incited directly or indirectly. These acts fall under sub-clauses (a), (d), (f), (g) and (m) of Clause 6 of Rule 28, J&K Security Rules, 1996.

3. That in the end of July, 1955, or beginning of August, 1955, at the house of Mirza Ghulam Mohd. Beg, in Anantnag, you along with some other accused, secured help from Pakistani co-conspirators for overthrowing the lawfully constituted government of Jammu and Kashmir. This act amounts to the prejudicial acts which fall under sub-clauses (a) and (m) of Clause 6 of Rule 28, J&K Security Rules, 1996, and which are punishable under Rule 32 of the above Security Rules.

4. That in August, 1955, in the house of Ghulam Mohd. Butt, alias Gula Reda, at Basant Bagh, Srinagar, you, in a meeting which was also attended by Sajawal Khan, absconding accused, Mirza Mohd. Afzal Beg, Sofi Mohd. Akbar, Pir Mohd. Maqbool Yalgami accused and others, asked for help in the shape of money, material and explosive material from Pakistan in order to achieve the aims and objectives of the abovementioned conspiracy, to excite feelings of enmity, hatred and disaffection towards the Government of Jammu and Kashmir, to promote disharmony and hatred amongst the different classes of

the people of the State, to cause alarm and fear among the public or any section of the public whereby the relations of the State with India would be prejudiced, the commission or abetment of the offences punishable under Sec.121 RPC., would be directly or indirectly instigated or incited. These acts fall under sub-clauses (a), (d), (f), (g) and (m) of Clause 6 of Rule 28, J&K Security Rules 1996, and are punishable under Rule 32 of the above Security Rules.

5. That during the period between April 1956 and August, 1956 you collected explosive material and used to carry it from one place to another in the car No. J&K.66 so that the relations of State with India be prejudiced the peaceful conditions in the State be disturbed, feelings of hatred, contempt and disaffection towards the Government of the State be created, fear and alarm among the public or any section of the people be caused. You instigated directly or indirectly, the commission or abetment of the offences punishable under Sec.121 RPC. These acts amount to prejudicial acts which fall under sub-clauses (a), (d), (g) and (m) of Clause 6 of Rule 28, J&K Security Rules and are punishable under Rule 32 of the above Security Rules.

6. That during the period of the conspiracy, the charge-sheet of which has been read over to you, you established contacts and corresponded with Pakistani co-conspirators and obtained financial help from Pakistan in order that the relations of the State with India be prejudiced, the peaceful conditions in the State be disturbed, fear and alarm among the public or any section of the public be caused. These acts amount to prejudicial acts which fall under sub-clauses (a), (g) and (m) of Clause 6 of Rule 28 J&K Security Rules 1996 and which are punishable under Rule 32 of the above Security Rules.

7. That in the year 1956 you instigated recruitment in a volunteer corps and in a 'Plebiscite Youth' for furthering the aims and objectives of the above mentioned conspiracy, namely the overthrow of the Government of Jammu and Kashmir and to facilitating wrongful annexation of the State by Pakistan. This is a prejudicial act and falls under sub-clauses (a) and (m) of Clause 6 of Rule 28 J&K Security Rules and is punishable under Rule 32 of the above Security Rules.

(8) That in furtherance of this conspiracy you together with other accused in the case, M/s.1. Mohiuddin Shah, 2. Sofi Mohd. A. 3. Ghulam Mohiuddin Hamdani, 4. Pir Mohd. Maqbool Yalgami, 5. Ghulam Mohd. Chikkan, 6. Ghulam Qadir Beg and others formed an unlawful assembly and committed arson, loot and killings at Hazratbal and Raj Bagh, Srinagar, on 21.2.58, leading to one Mohiuddin Bandey killed and many other persons receiving grievous and simple hurt and property being looted, destroyed and damaged. These acts are prejudicial acts and fall under sub-clauses (a), (g) and (m) of Clause 6 of Rule 28, J&K Security Rules, 1996.

Therefore, I order that I will hold trial for the charges mentioned.

Draft of the proposed amendment of the charges

CHARGE-SHEET AGAINST GHULAM MOHD. CHIKKAN, ACCUSED

Offence under Rule 32 J&K Security Rules, 1996

--

I, M.K. Tikoo, Additional Sessions Judge, Jammu, frame the following charges against you, Ghulam Mohammed Chikkan, s/o Abdul Aziz Butt, r/o Karan Nagar, Srinagar:

That in pursuance and furtherance of the conspiracy, charge-sheet for which has been read over to you, you committed the following prejudicial acts which fall under Clause 6 of Rule 28 of J&K Security Rules, 1996.

1. That from the year 1956 to 1958 you maintained contacts and correspondence with the absconding Pakistani co-conspirators and also received financial assistance from Pakistan and sent propaganda material to the abovementioned Pakistani co-conspirators with the purpose that State's relations with India may be disrupted, fear among the people or a section of the people caused; feelings of contempt or hatred or ill-will against Government of Jammu & Kashmir may be spread; and the feelings of enmity and hatred may be incited in the various subjects of the State, you, directly or indirectly instigated the commission or abetment of offence punishable u/s 121 RPC. They fall under sub-clauses (a), (d), (f), (g), and (m) of clause of Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

2. That in the year 1956 in the company of Mir Ghulam Rasool you received arms and ammunition from Sajawal Khan, absconding Pakistani accused, and Jehangir Khan, at Yus Maidan in order that the relations of the State with India may be prejudiced, peaceful atmosphere of the State may be upset; feelings of contempt, hatred and ill-will against the State government may be incited and the feelings of enmity and hatred among the various parties of the State subjects may be promoted; fear may be caused among the people or some section of the people. You directly or indirectly instigated or abetted the commission of offences punishable u/s 121 RPC. They fall under the sub-clauses (a), (d), (f), (g) and (m) of Clause 6, Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

3. That during the period of the conspiracy, charge sheet of which has been read over to you, you took active part in the activities of the War Council and Plebiscite Front, purpose and objectives of which were to overthrow the Govt. of J&K and to facilitate the wrongful annexation of the State of J&K with Pakistan and thus prejudice the relations of the State with India, disturb the maintenance of peaceful conditions of the State; to create contempt hatred and disaffection against the legally established government of the State; to incite the feelings of enmity and hatred among the various classes of the State; to cause fear and alarm among the people or a section of people and to directly or indirectly instigate the commission of offences punishable u/s 121 RPC. These amount to prejudicial acts which fall under sub-clauses (a), (d), (g) and (m) of Clause 6 of Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

4. That in February, 1955, you distributed copies of poster, Exhibit 173 among various persons with a view to dissuade the personnel of the Indian Military from doing its duty. They amount to prejudicial act, which fall under sub-clause (b) Clause 6 of Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

5. That in pursuance of this conspiracy, you along with other accused in this case, namely, (1) Kh. Ali Shah, (2) Mohiuddin Shah, (3) Sofi Mohd. Akbar, (4) Ghulam Mohiuddin Hamdani, (5) Pir Mohd. Maqbool Vilgami, (6) Ghulam Qadir Beg and others formed an unlawful assembly and committed arson, loot and murder on 21.2.58 at Raj Bagh Srinagar, leading to one Mohiuddin Bandy being killed and many other persons receiving minor and serious injuries, property being looted destroyed and damaged. They are prejudicial acts and fall under sub-clauses (a) (g) and (m) of Clause 6 of Rule 28 of the J&K Security Rules, 1996.

Therefore, Through this I order that I shall hold trial for the charges mentioned above.

Draft of the proposed amendment of the charges.

CHARGE-SHEET AGAINST MIR GHULAM RASOOL, ACCUSED

Offence under Rule 32, J&K Security Rules, 1996

I, M.K.Tikoo, Addl. Sessions Judge, Jammu, charge you, Mir Ghulam Rasool, s/o Mir Ahmed Shah, r/o Raj Bagh, Srinagar, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts, which fall under clause 6, Rule 28 of J&K Security Rules of 1996.

1. That during the period from April 1956 to August, 1956, you stored at your house in Srinagar boxes which contained explosive matter. They were taken from there to other places, with a view to cause alarm and fear among the public or any section of the public, to create contempt or hatred/or create disaffection towards the government of the State, to prejudice relations of the State with India and to disturb the peaceful atmosphere and to instigate directly or indirectly the commission or abetment of offences u/s 121 RPC which fall under sub-clauses (a), (d), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

2. That in 1956 you along with Ghulam Mohd. Chikkan at Yus maidan received arms and ammunition from Sajawal Khan, absconding Pakistani accused, and Jehangir Khan so that State's relations with India be prejudiced, peaceful atmosphere of the State may be disturbed, feelings of contempt or of hatred or of disaffection towards the State government be aroused and feelings of enmity and hatred among the various classes of the State subjects may be excited, alarm and fear may be created among the public or any section of the public. You instigated, directly or indirectly, commission or abetment of offences u/s 121 RPC which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

3. That during the period of the said conspiracy, charge-sheet of which has been read over to you, you took active part in the activities of the War Council and Plebiscite Front. Aims and objectives of these activities were to overthrow the Government of J&K and to facilitate the wrongful annexation of the J&K State with Pakistan which amount to prejudicing the State's relations with India, to prejudicing the peaceful conditions of the State, to creating contempt, hatred for and disaffection towards the Government of the State, established by law, to exciting the feelings of enmity and hatred among the various communities of the State, to causing fear and alarm in the public or any section of the public and to directly or indirectly instigating commission or abetment of offences u/s 121 RPC. These acts amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

4. That you, during the period of the conspiracy, charge-sheet of which has been read over to you, in pursuance and furtherance of this conspiracy, established contacts and correspondence with Pakistan-

and co-conspirators, on whose financial help you depended, you propagated material to Pakistan co-conspirators with the object that State's relations with India may be prejudiced, peaceful conditions of J&K may be upset, alarm and fear may be caused in the public or any section of the public, feelings of contempt or hatred or disaffection towards the Government of Jammu & Kashmir may spread and feelings of enmity and hatred may be excited among various State subjects. You instigated directly or indirectly commission or abetment of offences u/s 121 of Ranbir Penal Code, which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

5. That in or around October, 1956, you instigated and abetted violence with a view that State's relations with India may be prejudiced, State's peaceful conditions may be disturbed, alarm and fear may be created among the public or any section of the public. You instigated directly or indirectly commission or abetment of offences u/s 121 RPC which fall under sub-clauses (a), (d), (f), and (m) of clause 6, Rule 28 of J&K Security Rules of 1996, and punishable under Rule 32 of the said Security Rules.

Therefore, I order that I will hold trial for the charges mentioned above.

CHARGE-SHEET AGAINST GHULAM MOHIUDDIN HAMDANI, ACCUSED

Offence under Rule 32 of J&K Security Rules
1996

I, M.K.Tikoo, Additional Sessions Judge, Jammu, charge you, Ghulam Mohiuddin Hamdani s/o Ghulam Mohd. Zohra, r/o Srinagar,, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under clause 6 of Rule 28, J&K Security Rules 1996.

1. That during the period of conspiracy, the charge-sheet of which has been read over to you, you took active part and guided the activities of War Council and the Plebiscite Front with the object to prejudice the relations of the State with India to disturb the peaceful conditions in the State, to spread hatred or contempt or disaffection towards the government of the State established by law, to promote feelings of enmity and hatred and ill-will between different classes of the State subjects, to cause fear and alarm among the public or any section of the public and to instigate directly or indirectly the commission or abetment of offences punishable under Sec.121 IPC. These acts fall under sub-clauses (a), (d) (f), (g) and (m) of Clause 6 of Rule 28, J&K Security Rules 1996 and are punishable under Rule 32 of the above Security Rules.

2. That from 9th August, 1953, to April, 1958, you abetted and helped in the preparation, publication and circulation of propaganda material - posters and pamphlets - against the Government, with the aim to prejudice the relations of the State with India, to prejudice the maintenance of peaceful conditions in the State, to spread hatred or contempt against or to spread disaffection towards the State government, established by law, to promote feelings of enmity and ill-will among the different classes of the State subjects, to cause alarm and fear among the public or any section of the public and to instigate directly or indirectly, the commission or abetment of the offences punishable under Sec.121 IPC, which fall under sub-clauses (a), (d), (f), (g) and (m) of Clause 6 of Rule 28, J&K Security Rules 1996 and which are punishable under Rule 32 of the above Security Rules.

3. That in the end of July 1955 or in the beginning of August, 1955, you along with some other accused, secured help from Pakistani co-conspirators, at the house of Mirza Ghulam Mohd. Beg, situated at Anantnag, in order to overthrow the Government of J&K State established by law. This act amounts to the prejudicial act, which falls under sub-clauses (a) and (m) of Clause 6 of Rule 28, J&K Security Rules 1996 and which is punishable under Rule 32 of the above Security Rules.

4. That during the period of conspiracy, the charge-sheet of which has been read over to you, you established contacts and correspondence with the Pakistani co-conspirators and got even financial and other assistance/in order that the relations with India be prejudiced, the peaceful conditions in the State be disturbed, fear and alarm amongst the public or a section of the public be caused, contempt against and disaffection towards the Government be created, feelings of enmity and ill-will amongst the different classes of the State be promoted, you instigated directly or indirectly, the commission of offences punishable under Sec.121 IPC. These are prejudicial acts and fall under sub-clauses (a), (d), (f), (g) and (m) of Clause 6 of Rule 28, J&K Security Rules and which are punishable under Rule 32 of the above Security Rules.

5. That in furtherance of this conspiracy, you along with others accused in the case, N/s. 1. Kh. Ali Shah, 2. Mohiuddin Shah, 3. Mohd. Akbar, 4. Pir Mohd. Maqbool Yalgami, 5. Ghulam Mohd. Chikkar, 6. Ghulam Qadir Beg and others formed an unlawful assembly and committed arson, loot and killings at Hazratbal and Raj Bagh, Srinagar on 21.2.58. As a result of this one Mohiuddin Banday was killed, many other persons received grievous and simple hurts and property was looted, destroyed and damaged. These acts are prejudicial acts and fall under sub-clause (a), (g) and (m) of Clause 6 of Rule 28 J&K Security Rules 1996.

Therefore, I order that I will hold trial for the charges mentioned above.

Draft of the proposed amendments of the charges.

CHARGE-SHEET AGAINST MIRZA GHULAM QADIR BEG, ACCUSED

Offence under Rule 32, J&K Security Rules, 1996

I, M.K. Tikoo, Addl. Sessions Judge, Jammu, charge you, Mirza Ghulam Qadir Beg s/o Nizamuddin, r/o Sranal, Anantnag, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under Clause 6, Rule 28, J&K Security Rules, 1996.

1. That you in the company of some other accused secured help from Pakistani co-conspirators at the house of Mirza Ghulam Mohammed Beg, in Anantnag, at the end of July 1955 or in the beginning of August, 1955, in order to overthrow the lawfully established government of the J&K State. This amounts to prejudicial acts which fall under sub-clauses (a) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

2. That during the period of the said conspiracy, charge-sheet of which has been read over to you, you took active part in the activities of War Council and Plebiscite Front, participated in discussing plans in secret meetings for the achievements of its objectives. In these ways and means to overthrow the government, to facilitate the wrongful annexation of the State with Pakistan, to set fire to government buildings and religious places, to create communal riots, were thought over. In your house at Anantnag you secretly established a publicity centre for publication of posters etc. for achieving the same aims and ends of this conspiracy. This amounts to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

3. That during the period from April 1956 to October 1956, boxes which contained explosive matters had been stored at your house. They had been brought to your house by Kh. Ali Shah and Mohiuddin Shah and other accused with a view to prejudice J&K State's relations with India, to disturb the peaceful atmosphere of the State, to create contempt or hatred against or disaffection towards the State government, to create alarm and fear among the people or a section of the people and to directly or indirectly instigate commission or abetment of crimes u/s 121 RPC which fall under sub-clauses (a), (g) and (m), clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

4. That during the period of the conspiracy, charge-sheet of which has been read over to you, you established contacts and correspondence with the Pakistani co-conspirators so that the State's relation with India may be prejudiced, peace of the State may be disturbed, alarm and fear may be caused in the public or a section of the public. These acts amount to prejudicial acts which fall under sub-clauses (a), (g) and (m), clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the Security Rules.

5. That in furtherance of this conspiracy you together with

other accused in the case, namely, M/s. 1. Kh.Ali Shah, 2. Mohiuddin Shah, 3. Sofi Mohammed Akbar, 4. Ghulam Mohiuddin Hamdani, 5. Pir Mohd. Maqbool Vilgami, 6. Ghulam Mohd. Chikkan and others formed an unlawful assembly and indulged in arson, loot and killings at Hazratbal and Raj Bagh, Srinagar, on 21.2.58. As a result of this one Mohiuddin Banday was killed and many other persons received grievous and simple hurts, property was looted, destroyed and damaged. These acts are prejudicial acts and fall under sub-clauses (a), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996.

Therefore, I order that I will hold trial for the charges mentioned above.

CHARGE-SHEET AGAINST PIR MOHD. MAGBOOL VILGAMI, ACCUSED

Offence under Rule 32, J&K Security Rules, 1996

I, M.K.Tikoo, Additional Sessions Judge, Jammu, charge you, Pir Mohd. Magbool Vilgami, s/o Pir Hassan Shah, s/o Vilgam, Tehsil Handwara, Dist. Baramulla, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts; which fall under clause 6, Rule 28, of J&K Security Rules of 1996.

1. That you, in the company of some other accused, secured help from Pakistani co-conspirators in the house of Mirza Ghulam Mohammed Beg, situated at Anantnag, at the end of July, 1955, or in the beginning of August, 1955, in order to overthrow the Govt. of Jammu & Kashmir State, established by law. This amounts to committing prejudicial acts which fall under sub-clauses (a) and (m) of clause 6, Rule 28, J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

2. That in August, 1955, you in a meeting held in Srinagar at the house of Ghulam Mohd. Butt alias Gulla Reda, situated at Basant Bagh, which was participated by Sajawal Khan, absconding accused, Kh. Ali Shah, Sofi Mohd. Akbar, Mirza Mohd. Afzal Beg and other accused, asked for help from Pakistan in the form of money, material and explosive substance for the purpose of achieving the objective of the said conspiracy and for the object of inciting contempt, hatred and disaffection towards the Govt. of J&K State and for promoting feelings of enmity and hatred between different classes of the State subjects; and causing fear and alarm to the public or a section of the public so that the State's relations with India may be prejudiced and directly or indirectly the commission or abetment of offences u/s 121 RPC be instigated. These acts fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

3. That you, during the period of this conspiracy, charge-sheet of which has been read over to you, while you were under detention or outside, were taking active part in the activities of the Plebiscite Front whose objective and aims were to overthrow the Govt. of J&K and to facilitate the wrongful annexation of J&K State with Pakistan in order to prejudice State's relations with India, to prejudice the maintenance of peaceful conditions in the State, to bring into hatred and contempt and disaffection the government established by law in the State, to promote feelings of enmity and hatred between different classes of the State subjects, to cause fear and alarm to the public or any section of the public and to instigate or incite directly or indirectly the commission or abetment of offences u/s 121 RPC. These acts of yours amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28, J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

4. That during the period of the conspiracy, charge-sheet of which has been read over to you, you established and maintained contacts and correspondence with Pakistani co-conspirators in furtherance of the objectives of the said conspiracy. And these acts of yours amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

Rules.

5. That in furtherance of this conspiracy you, together with other accused in the case, namely, M/s. 1. Kh. Ali Shah, 2. Mohiuddin Shah, 3. Sofi Mohd. Akbar, 4. Ghulam Mohiuddin Hamdani, 5. Ghulam Mohd. Chikkan, 6. Ghulam Qadir Beg and others, formed an unlawful assembly and committed arson, loot and murder at Hazratbal and Raj Bagh, Srinagar, on 21.2.58, leading to one Mohiuddin Banday being killed, many other persons receiving grave and minor injuries; property having been looted, destroyed and damaged. These acts are prejudicial acts and fall under sub-clauses (a), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996.

Therefore, I order I will hold trial for the charges mentioned above.

Draft of the proposed amendment of the charges.

CHARGE SHEET AGAINST PIR MOHAMMED AFZAL
MAKHDOOMI, ACCUSED

Offence under Rule 32 32, J&K Security Rules, 1996
--

I, M.K. Tikoo, Additional Sessions Judge, Jammu, charge
you - Pir Mohammed Afzal Makhdoomi s/o Ahmed Shah, r/o Khanyar
(Daribal) Srinagar, with the following:

That in connection with and in furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts:

1. That in the capacity of being an active worker of the Plebiscite Front, Srinagar, you used to supply material such as news, drafts etc. for posters against the government with the purpose to create the feelings of contempt, displeasure and disaffection against the govt. and to create feelings of animosity and hatred among various classes in the State and to overthrowing the government.

2. Newsletter, exhibit 141 (A) of May, 1956, or thereabout and newsletter of September, 1957, or thereabouts are written on your behalf. Thus you committed the offence mentioned under Clause 6 of Rule 28 of the Security Rules, 1996, which is punishable under Rule 32 of the said Security Rules.

3. Thus you committed offences mentioned under sub-clauses (g), (f), (d) and (m) of Clause 6 of Rule 28 of the Jammu & Kashmir Security Rules, punishment for which is provided in Rule 32 of J&K Security Rules. Thus you have indirectly committed each prejudicial act described in Rule 28 of J&K Security Rules and punishable under Rule 32 of J&K Security Rules of 1996.

Therefore, I order that I shall try you for the charges mentioned above.

Draft of the proposed amendment of the charges.

CHARGE SHEET AGAINST KHAWAJA MOHAMMED AMIN, ACCUSED

Offence under Rule 32, J&K Security Rules, 1996.

I, M. K. Tikoo, Additional Sessions Judge, Jammu, charge you, Kh. Mohammed Amin, s/o Kh. Amir Din, r/o Abi Guzar, Srinagar, with the following:-

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under clause 6 of Rule 28, J&K Security Rules, 1996.

1) That during the period of the conspiracy, charge-sheet of which has been read over to you, you were guiding the activities of War Council and Plebiscite Front and taking active part in them with the object that the relations of the State with India may be prejudiced, the maintenance of peaceful atmosphere of the State be prejudiced, contempt, hatred and disaffection against the lawfully established government of the State be created, feelings of enmity and hatred among the various communities of the State be promoted, fear and alarm among the people or a section of the people be caused and the commission or abetment of offence punishable u/s 121 R.P.C. be instigated. They fall under sub-clauses a, d, f, g & m of Clause 6 of Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

2) That from 9th August 1953 to April 1958 you abetted and helped the preparation, publication and circulation of pamphlets, posters and propaganda against the government with the object that the relations of the State with India may be prejudiced, maintenance of peaceful atmosphere of the State be prejudiced, contempt, or hatred or ill-will against the lawfully established government of the State may be spread; hatred and enmity among the different communities of the State subjects may be promoted, fear and alarm be caused among the people or a section of the people and directly or indirectly the commission or abetment of offences punishable u/s 121 RPC be instigated. They fall under sub-clauses a, d, f, g and m of clause 6 of Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

Therefore, by this, I order that I shall try you for the above charges.

.....

Draft of the proposed amendment of the charges.

CHARGE SHEET AGAINST MOHIUDDIN ZARGAR, ACCUSED

Offence under Rule 32 of J&K Security Rules of 1996

I, M.K.Tikoo, Additional Sessions Judge, Jammu, charge you - Ghulam Mohiuddin Zargar, s/o Abdullah Joo, r/o Kadipora, Anantnag, Kashmir, with the following:

That in pursuance and furtherance of the said conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under clause 6, Rule No.28 of J&K Security Rules, 1996.

1. That from the year 1955 to 1957 you established and carried on contacts and correspondence with the co-conspirators of Pakistan and also secured financial assistance from Pakistan in order to prejudice the relations of the State of J&K with India and to prejudice the maintenance of peaceful atmosphere of the State and to cause fear and alarm among the people or a section of the people, to create feelings of contempt, hatred and ill will against the government and to promote the feelings of hatred and animosity among the various classes of the State. You directly or indirectly instigated the commission of offence punishable u/s 121 of the Ranbir Penal Code. They amount to prejudicial acts, which fall under sub-clauses (a), (d), (f), (g) and (m) of Clause 6 of Rules 28 of J&K Security Rules of 1996 and are punishable under Rule 32 of the said Security Rules.

2. That during the period of the said conspiracy, charge-sheet of which has been read over to you, you took active part in the guidance and encouragement of the War Council activities whose aim and object was to overthrow the Government of J&K and to facilitate the wrongful annexation of the State of Jammu & Kashmir with Pakistan, which amount to prejudicing the relations of the State with India, to prejudicing peaceful conditions of the State, to create contempt hatred for and disaffection towards the legally established government of the State, to inciting the feelings of hatred and enmity amongst the various communities of the subjects of the State, to creating fear and alarm among the people or a section of the people and to directly or indirectly instigate the commission of offence punishable u/s 121 of Ranbir Penal Code. And in pursuance of this you also took part in propaganda campaign. These acts of yours amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of Clause 6, Rules 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

3. That in June 1957 under your suggestion and instructions Abdul Aziz Parwana, PW, and others committed subversive acts, namely exploded bombs on the night between 27th and 28th June, 1957, in Palladium Cinema on 26th and 27th June, 1957, beneath the bridge in Alucha Bagh and planted a bomb in Hind-Kashmir Hotel, Srinagar, with the purpose that fear and alarm be created amongst the people or a section of the people, hatred, contempt and disaffection towards the lawfully established government of the State be created; the relations of the State with India be prejudiced and maintenance of peaceful conditions of the State be prejudiced and feelings of hatred, contempt and disaffection against the government be created and directly or indirectly, the commission of offence punishable under Sec.121 of Ranbir Penal Code be instigated. They fall under sub-clauses (a), (d), (g) and (m) of Clause 6 of Rule 28 of the J&K Security Rules 1996 and which are punishable under Rule 32 of the said Security Rules.

Therefore I order that I shall try you for the charges mentioned above.

Draft of the proposed amendment of the charges.

CHARGE SHEET AGAINST PIR ABDUL GHANI, ACCUSED.

Offence under Rule 32 of J&K Security Rules, 1996.

I, M. K. Tikoo, Additional Sessions Judge, Jammu, charge you, Pir Abdul Ghani s/o Pir Ghulam Ahmed, r/o Anantnag, Srinagar, with the following.

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under Clause 6 of Rule 28 of the J&K Security Rules of 1996.

1) That from the year 1955 to 1956, whether you were in detention or not, you took active part in the activities of Plebiscite Front which aimed at overthrowing the government of Jammu and Kashmir and at facilitating the wrongful annexation of the State by Pakistan, amounting to prejudicing the relations of the State with India, to prejudicing the maintenance of peaceful conditions of the State, to creating contempt, hatred and disaffection against the lawfully established government of the State, to promoting the feelings of enmity and hatred among the various communities of the State subjects, to causing fear among the public or a section of the people and to directly or indirectly instigating the commission of offences punishable under Section 121 of Ranbir Penal Code. And in pursuance of the said objectives of the said conspiracy, you wrote objectionable letters exhibits 81, 82 and 83 which amount to prejudicial acts and fall under the sub-clauses a, d, f, g & m of clause 6 of Rule 28 of J&K Security Rules of 1996 and are punishable under Rule 32 of the said Security Rules.

Therefore, I order that I shall try you for the charges mentioned above.

.....

CHARGE-SHEET AGAINST GHULAM MOHIUDDIN SHAH, ACCUSED

Offence under Rule 32 of J&K Security Rules, 1996

I, M.K.Tikoo, Additional Sessions Judge, Jammu, charge you, Ghulam Mohiuddin Shah, s/o Kh. Ali Shah, r/o Bagh Magharmal, Srinagar, with the following:

That in pursuance and furtherance of the conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts, which fall under clause 6, Rule 28 of J&K Security Rules of 1996.

1. That you, during the period of the said conspiracy, charge-sheet of which has been read over to you, took active part in the activities of the Plebiscite Front whose aims and objectives were to overthrow the Government of J&K and to facilitate the wrongful annexation of the State with Pakistan amounting to prejudice State's relations with India, to prejudice the maintenance of peaceful conditions in the State, to bring into hatred and contempt and disaffection the government established by law in the State, to promote feelings of enmity and hatred between different classes of State subjects, to cause alarm and fear among the public or any section of the public and to instigate directly or indirectly the commission or abetment of offences u/s 121 RPC. And in pursuance of this you also participated in the propaganda campaign. These acts of yours amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28, J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

2. That during the period of conspiracy, charge-sheet of which has been read over to you, in pursuance of the aims of that conspiracy you established and maintained contacts and correspondence with Pakistani co-conspirators so as to prejudice the relations of the State with India, to disturb the peaceful conditions in the State, to promote contempt, hatred and disaffection against the Government of the State established by law, to incite feelings of enmity and hatred among the different classes of the State subjects, to cause fear and alarm among the public or any section of the public and to instigate, directly or indirectly, the commission or abetment of offences under Sec.121 of RPC. And these acts of yours amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

3. That in 1956 in pursuance of and for achieving the objects of the said conspiracy, charge-sheet of which has been read over to you, you took explosive matter secretly brought into the J&K State from Pakistan to various places with the purpose to prejudice J&K State's relations with India, to prejudice the maintenance of peaceful conditions of J&K State, to promote contempt, hatred and disaffection against the State government, to cause alarm and fear among the public or any section of the public and to instigate, directly or indirectly, commission or abetment of offences u/s 121 RPC. These acts fall under sub-clauses (a), (d), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

4. That in furtherance of this conspiracy you, together with other accused in the case, M/s. 1. Kh. Ali Shah, 2. Sofi Mohd. Akbar, 3. Ghulam Mohiuddin Hamdani, 4. Pir Mohd. Maqbool Vilgami,

5. Ghulam Mohd. Chikkan, 6. Ghulam Qadir Beg and others; formed an unlawful assembly and committed arson, loot and murder at Hazratbal and Raj Bagh, Srinagar, on 21.2.58, leading to one Mohd. uddin Banday being killed, many other persons receiving serious and minor injuries; property being looted, destroyed and damaged. These acts are prejudicial acts and fall under sub-clauses (a), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996.

Therefore, I order that I will hold trial for the charges mentioned above.

CHARGE-SHEET AGAINST MIR MOHAMMED NAZIR, ACCUSED

Offence under Rule 32, J&K Security Rules, 1996

I, M.K.Tikoo, Sessions Judge, Jammu, charge you, Mir Mohammed Nazir, s/o Hassan Bakhsh, r/o Shaheed Ganj, Srinagar, with the following:

That in pursuance and furtherance of the said conspiracy, charge-sheet of which has been read over to you, you committed the following prejudicial acts which fall under Clause 6, Rule 28 of J&K Security Rules, 1996.

1. That during the period of the said conspiracy, charge-sheet of which has been read over to you, you maintained contacts and correspondence with Pakistan co-conspirators and also obtained financial assistance from Pakistan with the object to prejudice the State's relations with India and maintenance of peaceful conditions of the State and to promote contempt, hatred and disaffection towards the government of the State established by law, to promote enmity and hatred among the various communities of State subjects and to create alarm and fear in the public or a section of the public. These acts amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of the J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

2. That from the year 1955 to 1958, you took active part in the activities of the Plebiscite Front whose aims and objectives were to overthrow the Government of J&K and to facilitate the wrongful annexation of J&K State with Pakistan. They were to prejudice State's relations with India, to prejudice the maintenance of peaceful conditions in the State, to bring into hatred and contempt and disaffection the government established by law in the State, to promote feelings of enmity and hatred between different classes of the State subjects, to cause fear and alarm to the public or any section of the public and to instigate or incite directly or indirectly the commission or abetment of offences u/s 121 RPC. These amount to prejudicial acts which fall under sub-clauses (a), (d), (f), (g) and (m) of clause 6, Rule 28 of J&K Security Rules, 1996, and are punishable under Rule 32 of the said Security Rules.

Therefore, I order that I will hold trial for the charges mentioned above.

ALL JAMMU & KASHMIR LEGAL DEFENCE COMMITTEE
Shaheed Gunj, Srinagar, Kashmir

(Phone: 707)

Branch Offices

The Dawn, Jammu (Phone: 5133)

81/48 Diplomatic Enclave
New Delhi (Phone: 32202)

KASHMIR CONSPIRACY CASE

Reading over of charges

Today the court of Special Magistrate assembled at Jammu at 2.30 p.m. instead of 10.30 as is the usual time. The Magistrate charging jointly all the accused under Sec. 121A stated that Sheikh Mohd. Abdullah, Mirza Mohd. Beg, Kh. Ali Shah, Mirza Gh. Qadir Beg, Gh. Mohammed Chikkan, Mir Gh. Rasool, Sofi Mohd. Akbar, Pir Maqbool Yelgami, Gh. Mohiuddin Zargar, Pir Abdul Gani, Mir Mohd. Nazir, Gh. Mohiuddin Hamdani, Pir Mohd. Afzal Makdoomi, Mohiuddin Shah, Kh. Mohd. Amin along with the absconding accused, two approvers and known and unknown persons conspired from August, 1953, to April 30, 1958, in and outside the State to overthrow the duly constituted government of Kashmir by use and show of force with the purpose to facilitate the illegal annexation of J&K State with Pakistan.

After that he again charged all the accused under Sec. 120-B RPC read with Rule 32 of J&K Security Rules, 1966 Svt.

After reading over the charges he committed them to Sessions. Then he individually put two questions to each accused.

He called upon Sheikh Mohd. Abdullah and put the following questions to him:

Court: Have you heard the charges and understood them?

Sheikh Abdullah: Yes.

Court: Will you submit the list of witnesses?

Sheikh Abdullah: I will do that in the Sessions Court.

Continuing Sheikh Saheb asked as to why he did not put him the question whether he pleaded guilty or not.

Court: That is not the law.

Sheikh Abdullah: I do not plead guilty to these fantastic charges, and it is your duty to record what I have to say about these baseless charges.

Court: Let us not enter into the argument. There is a remedy. You can make use of that.

Sheikh Abdullah: Why have you involved me under Section 120-B RPC when the complainant has not said anything against me in his complaint under that Section.

Court: It is not the law that such a question should be asked in this court.

Sheikh Abdullah: I want to insist on this point that the complainant has only accused me of offence under Section 121-A. You have gone a step further and charged me under Section 120-B. I strongly deny all these baseless charges. My only crime is that I have trusted those who are at the helm of affairs.

in Delhi. I want to say to them and to those who have been pitchforked in office at Srinagar that put faith in them and believed in their pledges. They used to claim always about democracy and Gandhian teachings. By believing their pledges my poor nation and my country has greatly suffered and I owe a great responsibility to them. The result of this trust is that I am standing as an accused in dock before you.

Mr. Pandey: All this is not law.

Sheikh Abdullah: Is this law that you are doing here? My foot to this. We will fight till we achieve the right of self-determination.

After this, the Magistrate asked the same questions from Mirza Mohd. Afzal Beg who in reply said that all the charges were false, fabricated and baseless. He would reserve the right for producing the witnesses in the Sessions, because he feared that if he produced the list of witnesses at this time, they may become victims of repression and persecution at the hands of Kashmir Police. In addition to this, these witnesses would include big personalities within and without the State and many of them would be of international importance. So, it was necessary for him to have legal consultations before producing this list. This could not be done in time because almost all the accused were brought from Kashmir just two or three days before.

Then the Magistrate put these very questions to all the accused who replied that all these charges were fantastic and baseless and they will produce their list of witnesses in the Sessions Court.

However, Messrs. Gh. Mohd. Chikkan, Kh. Mohd. Amin and Mr. Hamdani requested the court that they should be given some time for producing the list of witnesses.

When the second question was asked from Mir Gh. Qadir Beg, he replied that in addition to the reasons given by Mr. Beg he had one more reason which was that during the period of his imprisonment in Jammu jail he had contracted rheumatic pain and so he feared that his witnesses might contract this disease.

The court adjourned for tomorrow.

28th December, 1961.

Issued by *G.M. Shah*
G.M. Shah
Defence Counsel and Secretary,
J&K Legal Defence Committee,
Jammu Tawi

ALL JAMMU & KASHMIR LEGAL DEFENCE COMMITTEE

Shaheed Gunj, Srinagar, Kashmir

(Phone: 707)

Branch offices:

The Dawn, Jammu (Phone: 5133)

81/48 Diplomatic Enclave
New Delhi: (Phone: 32202)

KASHMIR CONSPIRACY (Charge Sheet - contd)

When the court proceedings started for today the Magistrate said that he would charge the accused with individual acts done in pursuance of and for the purpose of achieving the aims of the alleged conspiracy. He read over the charge under Rule 32 of J&K Security Rules against Sheikh Abdullah and also charged him under Rule 28 of the J&K Security Rules. In his charge he said that the various speeches which Sheikh Mohd. Abdullah delivered at Hazratbal, Jama Masjid and Rainawari, were prejudicial. He further stated that the letters he wrote from prison to his followers outside the jail were also prejudicial and the meetings which he held at his house during his release were also meant for prejudicial activities against the government. He further stated that the formation of the Plebiscite Front was made under his advice and it was also for the purpose of creating disaffection and hatred against the government.

At this time Mr. Mubarak Shah, the Defence Counsel, objected and said that that would not be in accordance with law. He contended that the court acting under Sec. 239 had already jointly charged all the accused for conspiracy. Charging the accused now separately for alleged acts said to have been done by them in pursuance of conspiracy though by themselves they may fall under some other Act, would be vexatious, unnecessary and unwarranted by law. Referring to Sec. 239 of Cr.P.C. and 236 to 236 he contended that in a case of charge of conspiracy, acts said to have been done in pursuance of conspiracy are to be construed as having been done in the same transaction. Therefore, individually charging any for his separate act was against law and prejudicial to the accused. Secondly, you have charged Sheikh Mohd. Abdullah of having delivered speeches and dictated letters which you say are prejudicial and therefore attract Rule 32 of the Security Rules. Now again when a person is not charged with giving the name of the offence as enumerated in Penal Law or special law, but the subject matter of allegation is given, the charge must state precisely the manner and particulars of the act which are considered as offence. This is the purpose of Sec. 223 Cr.P.C. which provides that in case the manner and particulars of the act are given in charge they must be stated precisely to give notice to the accused of the act of which he is charged. That section gives the illustration. A is charged with giving false evidence. The portions which are alleged to be false must be stated. Now the court has to state which portions of speeches and letters are considered by it to be prejudicial.

The Magistrate observed that that was the matter which was to be considered by the Sessions Court which may drop any charge, if it considered that unwarranted.

Counsel
The Defence/again pleaded for being told the particulars portions which were considered prejudicial. The court said that the objection would go on record.

The court then asked Sheikh Mohd. Abdullah if he had heard this charge. "I am astonished to know what portions

Sheikh Saheb said, "I am astonished to know what portions

of my speeches or letters are considered prejudicial. Simply hurling an accusation of general character would not give any notice of the offence of which I am being charged. I had expected that this Magistrate would exercise some independence of mind. Now you are repeating what the Prosecution has said. I have said already that this is a farce, a drama, which is being staged here. May I ask what you have been doing all these 4 years here, if even today you can not point out to me what portion of my speech you think to be prejudicial. I want that you should point out precisely that portion.

Magistrate: I have said that that matter is for Sessions Court.

Sheikh Saheb: But you are framing the charges. How does the poor Sessions Judge know what you thought to be prejudicial? There are good expressions used in these speeches for India's leaders. You think that are also prejudicial. Anyhow whether what you are doing is covered by procedure or not, so far as I am concerned, I take this whole affair as farcical and purposeless. You may do whatever you like.

Magistrate: I told you that your speeches are prejudicial.

Sheikh Saheb: I do not deny that I had delivered speeches. I have a right to make speeches. Now I am charged because I have delivered speeches. What portions are there which are objectionable? The world is not told of that. At least I must know for myself what is prejudicial in my speeches.

Mr. Beg: has in detail commented on these speeches. He has claimed that they can be read in defence of the accused. Now I am not told what is prejudicial in there. You say that you are acting according to law. I feel a little confused. I am not a lawyer. But as an accused I can ask you this. I had expected that you would sift evidence and say what is wrong. I do not know if that is not the function of a Magistrate. May be that you have only to record what the Prosecution has said and repeat that to us. I had heard that you used to have some reputation of having some independence of mind. I am not disrespecting you - excuse me. But have I not the right to know which portion of my speech you think is prejudicial?

Magistrate: I can only ask you the next question which is about the list of witnesses you would like to be produced in the Sessions.

Sheikh Saheb: But what purpose would be served. Please let me know.

Magistrate: You may say something.....

Sheikh Saheb: But I seek your advice in this. Do you think any purpose would be served by giving a list of witnesses?

Magistrate: What can I say?

Sheikh Saheb: You know what has been happening behind scenes all these years. May I consult you in the chamber?

Magistrate: But I have to write here something.

Sheikh Saheb: All right, I will let you know on the next working day.

Then he began to read over to Beg Saheb the separate charge of his individual act. The Defence counsel again objected and said that his objection should go on record.

Reading to Beg Saheb the Magistrate charged that he had held a meeting in his house in 1955 in which it had been decided that the government be overthrown by use and show of force. This was a prejudicial act. The second charge was that Mr. Beg had written a letter which was a prejudicial act.

Beg Saheb: *I will be called the best patriot the moment I withdraw the demand for plebiscite in Kashmir. That is the only dispute between us and the powers that be. Otherwise, all know that we are more patriotic, more devoted to our mother land. We shall rather give our lives than see any dishonour coming to our mother land.

Court: Will you give the list of witnesses here.

Mr. Beg: This is a grave matter. You had asked me yesterday if I had any defence witnesses. I had told you that I would consider over the matter. Now I would request you to take down the names of persons whom I would like to be summoned in my defence. About others, I would submit the list in future because I fear that they may be tampered with and persecuted right from now.

1. Pt. Jawaharlal Nehru, Prime Minister of India.
2. Lord Mountbatten, ex-Governor General of India, London
3. Secretary General, United Nations, New York
with records to be listed later on.
4. Shri V.K. Krishna Menon, Defence Minister, Govt. of India.
5. Commandant, United Nations, posted in Jammu & Kashmir State from 1953 to 1958, with records to be listed later on.
6. Shri V.P. Menon, ex-Secretary, States Ministry, Govt. of India.
7. Shri Karan Singh, Sadr-i-Riyasat, Kashmir State.
8. Bakshi Ghulam Mohd., Prime Minister, Kashmir State.
9. Shri S.L. Saraf, Minister, Kashmir State.
10. Mr. G.M. Sadiq, Minister, Kashmir State.
11. Secretary, Constituent & Legislative Assembly (1953-56)
J&K State, with records to be listed later on.

The court rose for the day.

Issued by

(Signature)
for

(G.M. Shah)
Defence Counsel and Secretary,
J&K Legal Defence Committee,
Jammu Tawi.

29th December, 1961.

Branch Offices

The Dawn, Jammu (Phone:5133)

81/48 Diplomatic Enclave,
New Delhi: (Phone:32202).

KASHMIR CONSPIRACY CASE

(Charge Sheet - continued)

Today when the court assembled, the following were charged individually for their prejudicial acts in pursuance of their alleged conspiracy for which they were jointly charged on Dec. 28, 1961.

1. Kh. Ali Shah
2. Mirza Gh. Qadir Beg
3. Sofi Mohd. Akbar
4. Pir Mohd. Maqbool Yalgami
5. Pir Mohd. Afzal Makdoomi
6. Kh. Mohiuddin Shawl
7. Mr. Mohideen Shah
8. Kh. Gh. Mohd. Chikkan
9. Mir Gh. Rasool.

and, were committed to the Sessions.

Messrs. Pir Abdul Gani, Mohd. Amin, G.M. Hamdani and Mir Mohd. Nazir were not charged for their individual acts.

All the accused pleaded not guilty to these charges and stated that these charges were baseless.

Mr. Mohiuddin Shawl said that on a similar baseless story of Prosecution he was being tried for the last 5 years by the Special Judge at Srinagar. He contended that it was unjust to try him in another case for similar charge.

Excepting Mr Gh. Rasool, Kh. Mohd. Amin, Mr. G.M. Hamdani, Pir Mohd. Afzal Makdoomi and Mr. Mohiudeen Shah, all the accused reserved the right of submitting the list of their witnesses in Sessions. The aforesaid accused requested for 15 days time so that they could/consultation and then would submit their list of witnesses to the court. Kh. Gh. Mohd. Chikkan submitted his list of witnesses today in the court.

Kh. Ali Shah

While reading over the charges of his individual acts, the Magistrate stated that in pursuance and for the purpose of achieving the aims of alleged conspiracy

(1) Kh. Ali Shah had attended a meeting in the house of Mirza Gh. Mohd. Beg in 1955 where Ataulah Beg, the approver, had brought a letter from Pakistan wherein Pakistan had assured every help to the conspirators in Kashmir.

(2) Kh. Ali had also met in 1955 Sajawal Khan, an important conspirator at the residence of Kh. Gh. Mohd. Butt of Basantbagh where, Sajawal Khan had offered to send explosives from Pakistan so that disturbances could be created in Kashmir.

(3) In April 1956 Mir Gh. Rasool delivered explosives to him and he took those in his car No. J&K 66 to the house of Mirza Gh. Qadir Beg at Anantnag for achieving the object of

overthrowing the government and creating chaos and disturbances in the State.

Mirza Gh. Qadir Beg

Charging him under Rule 28 of J&K Security Rules, the Magistrate stated that -

- (1) Mirza Gh. Qadir Beg had attended the meeting in 1955 at Mirza Gh. Mohd. Beg's residence at Anantnag where Ataullah Beg delivered a letter from Pakistan to the conspirators.
- (2) That ^{his} house was the centre of publicity from August 1955 to 1958 wherein posters were being written with the purpose of spreading disaffection amongst the people, against the government and that these posters were recovered from his house search.
- (3) That in 1955 Kh. Ali Shah came in a car to Mirza Gh. Qadir's place with explosives etc which were delivered to him so that chaos and disturbances could be created in the State.

Sofi Mohammed Akbar

Charging him under Rule 28 for individual acts, the Magistrate stated:

- (1) That Sofi Mohd. Akbar took part in the meeting which was held in 1955 at Mirza Gh. Mohd. Beg's residence at Anantnag where Ataullah Beg, the approver, had come with a letter from Pakistan wherein full support was promised by Pakistan so that the J&K government could be overthrown.
- (2) That Sofi Saheb participated in a meeting in 1955 at Gh. Mohd. Butt's residence at Basantbagh in which Sajawal Khan of Pakistan was also present and where Sajawal Khan had promised to send explosives into the State so that chaos and disturbances could be created.

Pir Mohd. Maqbool Yalgami

Reading over the charges to Pir Mohd. Maqbool Yalgami about his individual acts, the Magistrate stated that -

- (1) Pir Yalgami had attended the meeting in 1955 at Mirza Gh. Mohd. Beg's residence wherein Ataullah Beg, approver, was also present and had also attended the meeting at Gh. Mohd. Butt's residence wherein Sajawal Khan was also present. The purpose of these meetings was to receive explosives from Pakistan and start disturbances in the State.

Pir Mohd. Afzal Makdoomi

Reading over charges to Pir Mohd. Afzal Makdoomi of his individual acts, the Magistrate stated that he used to write posters of the Plebiscite Front organisation which were meant to spread disaffection and hatred against the government and create chaos in the State.

Kh. Mohideen Shawl

While reading charges over to Kh. Mohideen Shawl of his individual acts, the Magistrate stated:

- (1) That Mr. Shawl had contacts with Pakistan from 1955-1957, and he used to receive illegal help - financial and otherwise - to overthrow the government. He further stated that Mr. Shawl received Rs. 7000 in 1955 from Mr. Sajawal Khan through Abdul Aziz Parwana, the P.W. in this case.

(2) That Mr. Shawl had the full knowledge about receiving of bombs and other explosives from Pakistan so that disturbances could be created in the State and bridges and other places could be blown up.

Kh. Ghulam Mohiudin Shah

Reading over the charge of his individual acts, the Magistrate stated -

That in Sept., 1955, Mr. Ghulam Mohiudin Shah went in the jeep car of the Plebiscite Front to Mirza Gh. Qadir Beg's residence at Anantnag, taking a box of explosives with him for delivery to him so that these could be used for creating disturbances and chaos in the State.

Kh. Gh. Mohd. Chikkan

The Magistrate charging him under Rule 28 for his individual acts stated:

(1) That Mr. Chikkan had contacts with important conspirators of Pakistan and used to get financial help from them so that government could be overthrown. At the time of the cricket match at Lahore, he went along with Munshi Mohd. Isaq, a co-conspirator to Lahore and obtained money from Pakistan.

(2) That in Sept., 1955, he went along with Mir Ghulam Rasool to Yus maidan where he met Sajawal Khan and Jehangir from Pakistan and obtained explosives from them so that disturbances could be created in the State.

Mir Gh. Rasool

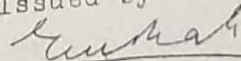
Charging him under Rule 28 of the J&K Security Rules of his individual acts, the Magistrate stated:

(1) That in 1956 he delivered a box of explosives to Kh. Ali Shah which was taken by Kh. Ali Shah in his car J&K 66, and these explosives were brought from Pakistan.

(2) That in Sept., 1955, Mir Saheb in company with Kh. Gh. Mohd. Chikkan went to Yus maidan where both met Sajawal Khan and Jehangir Khan and got explosives from them so that chaos and disturbances could be created in the State.

The court was adjourned up to 2nd January, 1962, when the petition from Mr. Gh. Mohd. Chikkan for bail and another petition from Mirza Gh. Qadir Beg for transfer to Central Jail, Srinagar, will be heard and argued by the respective parties.

Issued by



G. M. SHAH
Defence Counsel & Secretary
J&K Legal Defence Committee
Jammu Tawi.

Decr. 30, 1961.

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU & KASHMIR
JAMMU.

STATE Vs. MIRZA MOHD. AFZAL BEG & OTHERS
u/s 121-A R.P.C. etc.

CHARGE - SHEET

Against accused:

- | | |
|------------------------------|-------------------------------|
| 1. Sheikh Mohammed Abdullah | 9. Ghulam Mohiuddin Zargar |
| 2. Mirza Mohd. Afzal Beg | 10. Pir Abdul Ghani |
| 3. Kh. Ali Shah | 11. Mir Mohammed Nazir alias |
| 4. Mirza Ghulam Qadir Beg | Mistri Nazir |
| 5. Ghulam Mohd. Chikkan | 12. Ghulam Mohiuddin Hamdani |
| 6. Mir Ghulam Rasool | 13. Pir Mohd. Afzal Makhdoomi |
| 7. Sofi Mohammed Akbar | 14. Mohiuddin Shah |
| 8. Pir Mohd. Maqbool Yalgami | 15. Kh. Mohammed Amin |

Charge No.1 u/s 121-A Ranbir Penal Code.

I, N. K. Hak, Magistrate First Class, Jammu & Kashmir, Jammu,
hereby charge you -

1. Sheikh Mohd. Abdullah s/o Mohd. Ibrahim r/o Sowra, Srinagar;
2. Mirza Mohd. Afzal Beg s/o Nizamuddin, r/o Sarnal, Anantnag, Kashmir;
3. Kh. Ali Shah s/o Ahmed Shah, r/o Bagh Magharmal, Srinagar;
4. Mirza Ghulam Qadir Beg, s/o Nizamuddin, r/o Sarnal, Anantnag, Kashmir;
5. Ghulam Mohd. Chikkan, s/o Abdul Aziz, r/o Karan Nagar, Srinagar;
6. Mir Ghulam Rasool s/o Mir Ahmed Shah, r/o Raja Bagh, Srinagar;
7. Sofi Mohd. Akbar, s/o Asadullah, r/o Sopore, Kashmir;
8. Pir Mohd. Maqbool Yalgami s/o Pir Hasan Shah, r/o Vilgam, Tehsil Handwara, District Baramulla;
9. Ghulam Mohiuddin Zargar s/o Abdullahjoo r/o Gadipora, Anantnag, Kashmir;
10. Pir Abdul Ghani s/o Pir Ghulam Hasan Shah, r/o Mohalla Qazi, Anantnag, Kashmir;
11. Mir Mohd. Nazir, alias Mistri Nazir, Overseer, s/o Hassan Bakhsh, now resident of Shaheedgunj, Srinagar;
12. Ghulam Mohiuddin Hamdani s/o Ghulam Mohd. Zohra (Hamdani) r/o Khangahi Moualla, Srinagar;
13. Pir Mohd. Afzal Makhdoomi s/o Ahmed Shah r/o Daribal, Srinagar;
14. Mohiuddin Shah s/o Kh. Ali Shah r/o Bagh Magharmal, Srinagar;
15. Kh. Mohd. Amin s/o Amiruddin r/o Abi Guzar, Srinagar;

as follows:

That you, from 9th August 1953 to 29th April 1958, along with absconding accused -

1. Pir Mohd. Maqbool Gilani s/o Mir Hassan Shah, r/o Khanyar, Srinagar;
2. Merajuddin s/o Lal Din r/o Salasan Bonyar, Tehsil Uri, Distt. Baramulla;
3. Maqbool Naik s/o Aziz Naik r/o Chak Tereran, Tangmarg, Tehsil and Distt. Baramulla;
4. Jehangir Khan alias Salim Jehangir s/o Allah Dad r/o Bagh Mehtab, Srinagar;
5. Khan Mohd. Khan, Deputy Supdt. Police, Pakistan Intelligence, Rawalpindi, West Pakistan;
6. Sajawal Khan, Sub-Inspector, Pakistan Intelligence, Hillan, Mori Maidan, P.O.K;
7. Karamat Hussain Shah, Sub-Inspector, Pakistan Intelligence, Lipa, POK; Hillan, P.O.K;
8. Kh. Tajuddin, Sub-Inspector, Pakistan Intelligence Bureau;
9. Major Asghar Ali Shah, ASP, Pakistan Intelligence Bureau;

Approvers, namely, Attaullah Beg and Zaman Paray; Co-conspirators, as given in the attached list, and with other unknown persons at Srinagar, Kud and several other places in the Jammu & Kashmir State and outside Jammu & Kashmir State, conspired by means of criminal force and show of criminal force to overawe the legally and constitutionally established Government of the Jammu and Kashmir with the object of overthrowing the Jammu & Kashmir Government and facilitating wrongful annexation of the State of Jammu and Kashmir with Pakistan, creating amongst the public, hatred, disaffection against the Government, creating communal feeling and disharmony in the State, so that public peace and tranquillity might be disturbed and community's life be disrupted and subversive activities might be carried out. These activities were carried out by show of criminal force and use of such force by and commission of various other acts particularly with the assistance of Pakistan agencies and officials in securing from them funds and materials which include arms, explosives and anti-Government posters and pamphlets.

Therefore, all of you have committed this offence which is punishable u/s 121-A R.P.C. and which is triable by the Court of Sessions and not triable by this Court. I, therefore, by this writing hereby order that in view of the aforesaid charges, your case should be committed to the Court of Sessions as this offence is not triable by this court.

Charge No.2, offence u/s 120-B Ranbir Penal Code, read with Rule 32, J&K Security Rules 1996.

I, N.K.Hak, Magistrate First Class, Jammu & Kashmir, Jammu hereby charge you - the accused:

1. Sheikh Mohd. Abdullah s/o Mohd. Ibrahim r/o Sowra, Srinagar
2. Mirza Mohd. Afzal Beg s/o Nizamuddin r/o Sarnal, Anantnag, Ka
3. Kh. Ali Shah s/o Ahmed Shah r/o Bagh Magharmal, Srinagar;
4. Mirza Ghulam Qadir Beg, s/o Nizamuddin, r/o Sarnal, Anantnag, Ka
5. Ghulam Mohd. Chikkan s/o Abdul Aziz r/o Karan Nagar, Srinagar;
6. Mir Ghulam Rasool s/o Mir Ahmed Shah r/o Rajbagh, Srinagar;
7. Sofi Mohd. Akbar s/o Assadullah r/o Sopore, Kashmir;
8. Pir Mohd. Maqbool Vilgami s/o Pir Hassan Shah s/o Vilgam, Tehsil Handwara, Distt. Baramulla, Kashmir;
9. Ghulam Mohiuddin Zargar s/o Abdullahjoo r/o Gadipora, Anantnag;
10. Pir Abdul Ghani s/o Pir Ghulam Ahmed, Mohalla Qazi, Anantnag;
11. Mir Mohd. Nazir alias Mistri Nazir s/o Hassan Bakhsh r/o Shaheedganj, Srinagar, Kashmir;
12. Ghulam Mohiuddin Hamdani s/o Ghulam Mohd. Zohra (Hamdani) r/o Khanqahi Moualla, Srinagar;
13. Pir Afzal Makhdoomi s/o Ahmed Shah r/o Khanyar, Daribal, Sr
14. Mohiuddin Shah s/o Kh. Ali Shah r/o Bagh Magharmal, Srinagar;
15. Kh. Mohd. Amin s/o Amiruddin r/o Abi Guzar, Srinagar;

as follows:

That from 9th August 1953 till 29th April 1958, you along with the absconding accused -

1. Pir Maqbool Gilani s/o Mir Hassan Shah r/o Khanyar, Srinagar;
2. Merajuddin s/o Lal Din r/o Salasan Bonyar, Tehsil Uri, Distt. Baramulla, Kashmir;
3. Maqbool Naik s/o Aziz Naik, r/o Chak Tereran, Tangmarg, Tehsil & Distt. Baramulla, Kashmir;
4. Jehangir Khan alias Salim Jehangir s/o Allah Dad r/o Bagh Mehtab, Srinagar;
5. Khan Mohd. Khan, Deputy Superintendent, Pakistan Intelligence, Rawalpindi, West Pakistan;
6. Sajawal Khan, Sub-Inspector, Pakistan Intelligence, Hillan, Mori Maidan, P.O.K;

7. Karamat Hussain Shah, Sub-Inspector, Pakistan Intelligence, Hillan, P.O.K;
8. Kh. Tajuddin, Sub-Inspector, Pakistan Intelligence, Lipa, POK;
9. Major Asghar Ali Shah, ASP, Pakistan Intelligence Bureau;

and approvers, namely, Attaullah Beg and Zaman Paray and important co-conspirators, as given in the attached list and with other unknown persons at Srinagar, Kud and diverse other places, both within and outside the Jammu and Kashmir State, conspired to overawe by means of criminal force and show of criminal force the legally and the constitutionally established Government of Jammu and Kashmir, with the object of overthrowing the Jammu & Kashmir Government and facilitating the wrongful annexation of the State of Jammu and Kashmir by Pakistan, creating amongst the public, hatred and disaffection against the Government, creating communal feeling and disharmony in the State so that public peace may be disturbed; and disturbance and subversive actions may be brought into the lives of the people and the public. These activities were carried out by the show of criminal force and use of such force and commission of various acts particularly by securing and with the help from Pakistan agencies and officials, funds and materials, including arms, explosives and anti-Government posters and pamphlets. These are prejudicial acts which come under sub-clauses (a), (b), (d), (f), (g) and (m) of Clause 6 of Rule 28, J&K Security Rule 1996. These prejudicial acts were committed in furtherance of the above mentioned conspiracy. Therefore, you all have committed this offence which is punishable u/s 120-B Ranbir Penal Code, read with Rule 32 of J&K Security Rules 1996. This offence is triable by the Court of Sessions and this offence is not triable by this court. I, therefore, by virtue of this writing hereby order that in view of the above-mentioned charges, your case be committed to the Court of Sessions as this offence is not triable by this court.

Charge-sheet read over and explained.

Written on 28th December 1961.

Sd/ Magistrate
(in English)
Dated 28.12.61.

LIST OF IMPORTANT CO-CONSPIRATOR

1. Begum Sheikh Mohd. Abdullah r/o Sowra, Srinagar.
2. Nasrullah Khan s/o Fagir Khan r/o Khai, Teh: Haveli, Poonch, POK.
3. Afzal Khan s/o Mohd. Yaqub Khan r/o Khai, Teh: Haveli, " " " " " "
4. Raj Wali
5. Raja Mohd. Roshan, Sub-Inspector, Hillan, POK
6. Sadrauddin s/o Ghulam Rabbani r/o Hechamarg, Handwara.
7. Ghulam Hassan Kanth, s/o Amiruddin Kanth, Sona Masjid, Srinagar.
8. Haji Mohd. Ishaq s/o Munshi Hasan Ali r/o Nawapora, Srinagar.
9. Ghulam Mohd. Sha (Gul Shah) s/o Ahmed Shah, Bagh Magharmal, Srinagar.
10. Ghulam Ganai s/o Ahmed Ganai s/o Tulwari, Tehsil Uri.
11. Siddiq Sheikh (Sadda Sheikh) s/o Ahmed Sheikh, Tulwari, Teh: Uri.
12. Ahmedullah Butt s/o Mohd. Ismail s/o Guru Bazar, now Rawalkot.
13. Khalida Sahiba, d/o Sheikh Mohd. Abdullah, Srinagar.
14. Alamgir Khan b/o Jehangir Khan r/o Srinagar, now P.O.K.
15. Sadrauddin Mujahid, r/o Srinagar.
16. Bagh Ali s/o Fattu Gujar, r/o Badan, Police Station Kahna, now Sialkot.
18. Abdul Ghafoor Khan, ex-Sub-Inspector Police s/o Akram Khan, r/o Talab Khateekan, Jammu.
19. Abdul Rahim s/o Lal Din r/o Naukot, now Dera Sher Khan, POK.
20. Maulana Mohd. Saeed Masoodi, ex-M.P.
21. Begum Mirza Mohd. Afzal Beg, r/o Sarnal, Anantnag
22. Begum Mohiuddin Zargar r/o Anantnag
23. Ghulam Mohd. Dar r/o Srinagar
24. Ghulam Mohd. Butt r/o Basant Bagh, Srinagar.
25. Smt. Mridula Sarabhai r/o Chanakyapuri, New Delhi
26. Hissamuddin Banday r/o Dargah Sharif Hazratbal
27. Ghulam Hassan Inquilabi r/o Anantnag
28. Mohd. Amin Butt s/o Ghulam Mohd. Butt r/o Basant Bagh, Srinagar.
29. Aziz Khan, employee of Pir Mohd. Maqbool Gilani r/o Khanyar, Srinagar
30. Abdul Salam Kotey, original r/o Kashmir, now at Lahore, Pakistan
31. Akbar Mirpuri now r/o Pakistan.
32. Malik Mohd Hussain, CID Officer, Sialkot, Pakistan.
33. Saeeda Begum, mother of Ghulam Hassan Kanth, Srinagar
34. Ghulam Hassan Wani s/o Wani r/o Karfali Mohalla, Srinagar.
35. Mohd. Ismail r/o Balla Kot, Tehsil Uri.
36. Lal Din s/o Merajuddin, accused.
37. Badrauddin son-in-law of Kh. Ali Shah, accused.
38. Ali Mohd. Bala Kalu r/o Tola Mola.
39. Rahim Ali s/o Chiraghuddin Gujar
40. Anayatullah Shah r/o Village Ghasla, Muzaffarabad
41. Ghulam Hassan Dar s/o Ghulam Mohd. r/o Nalabandpora, Srinagar.
42. Raja Abdul Hamid Khan r/o Holi Siya, District Muzaffarabad, ex-Minister, Azad Kashmir, P.O.K.
43. Abdul Aziz alias Aziz Saheb, Intelligence, P.O.K.
44. Ali Mohd. Bazaz, r/o Habbakadal, Srinagar.
45. S.M. Raza s/o Syed Taqi Shah r/o Srinagar, at present Passport Officer, High Commissioner, Pakistan, at Delhi.
46. Mohd. Sultan Rangrez, ex-Secretary, Plebiscite Front, Srinagar.
47. Shamsuddin r/o Anantnag
48. Sheikh Nazir, nephew of Sheikh Mohd. Abdullah r/o Sowra, Srinagar.

28.12.61.

Sd/ Magistrate
(in English)

State Vs. Mirza Mohd. Afzal Beg & Others
U/s 121-A R.P.C. etc.

Copy of the charge-sheet against Sheikh Mohammed Abdullah.
offences under Rule 32 of J&K Security Rules, Svt. 1996.

I, N. K. Hak, Magistrate First Class, frame the following
charges against you - Sheikh Mohd. Abdullah s/o Mohd. Ibrahim r/o
Sowra, Srinagar.

That in connection with and in furtherance of the conspiracy
the charge-sheet of which has been read over to you, you have committed
the following prejudicial acts:

1) That at the following different places and dates you delivered
speeches and thus have committed the offences under sub-clauses (a),
(d), (f) and (m) of clause 6 of Rule 28, J&K Security Rules, which
is punishable under Rule 32, J&K Security Rules, Svt.1996:

<u>Place</u>	<u>Date</u>	<u>Place</u>	<u>Date</u>
Hazratbal	13.1.58	Hazratbal	28.2.58
Hazratbal	17.1.58	Hazratbal	16.2.58
Hazratbal	31.1.58	Jama Masjid	7.2.58
Hazratbal	21.2.58	Karala Khud Chowk, Srinagar	2.3.58

2) That when you were under detention in Kud Jail, you dictated
the following circular letters and from there sent them for circulation
among the public. Thus you have committed offences under sub-clauses
(a) and (d) of clause 6 of Rule 28 J&K Security Rules which is punish-
able under Rule 32 J&K Security Rules, Svt.1996:

<u>Exp No.</u>	<u>Date</u>	<u>Exp No.</u>	<u>Date</u>
72 C	28.4.57	72 M	6.12.56
72 D&E	26.3.57	72 L	20.12.56
72 F&G	2.3.57	72 K	22.12.56
72 J	2.1.57	72 P	12.11.56
72 I	14.1.57	72 O	17.11.56
72 H	17.2.57	72 N	28.11.56

3) That between January 1958 and 29th April 1958 you have been
holding meetings at your house at Sowra, Srinagar, where you have
exhorted the workers of the Plebiscite Front to overthrow the Govern-
ment of Jammu and Kashmir and for this purpose you have been pressing
the need for recruitment of Razakars. And in this connection a
document - Exp. 162 - was recovered from your house search on the
night of 29/30th April 1958. And, therefore, you have committed an
offence under sub-clause (m) of clause 6 J&K Security Rules which is
punishable under Rule 32 J&K Security Rules, Svt.1996.

4) That when you were detained in Kud Jail, you used to secretly
direct and encourage the illegal activities of the War Council, which
was later on converted into Plebiscite Front and the aim of which was
to overthrow the Government of the State. And, therefore, you have com-
mitted offences under sub-clauses (d) and (m) of Clause 6 of Rule 28
of J&K Security Rules which is punishable under Rule 32 of J&K Security
Rules Svt.1996.

And thus you have committed each of the several prejudicial acts
which are offences under Rule 28 of the J&K Security Rules, which is
punishable under Rule 32 of J&K Security Rules, Svt.1996 and which is
triable by the Court of sessions also.

Therefore, I order by this writing that in view of the charges mentioned above, you should be committed to Sessions for trial.

Charge-sheet read over and explained.

Sd/ Magistrate
(in English)

Dated 29.12.1961

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU.

State Vs. Mirza Mohammed Afzal Beg & Others.
U/s 121-A RPC

Copy of the Charge-sheet against Mirza Mohd. Afzal Beg, accused.
Offence under Rule 32 J&K Security Rules.

I, N.K.Hak, Magistrate, First Class, Jammu & Kashmir, Jammu,
frame the following charge against you - Mirza Mohd. Afzal Beg s/o
Nizamuddin r/o Sarnal, Anantnag, Kashmir:

That in connection with and in furtherance of the conspiracy the
charge-sheet of which has been read over to you, you have committed
the following prejudicial acts:

1) That in the end of July 1955 or beginning of August 1955 you
called a secret meeting in the house of Mirza Ghulam Mohd. Beg at
Anantnag and at the time of the meeting there Attaullah Beg, approver,
had brought a letter for you from Pakistan. In that meeting you, along
with some other accused, exhorted to overthrow the present government.
And, therefore, you have committed offences under sub-clauses (a) and
(m) of clause 6 of Rule 28 of J&K Security Rules, which is punishable
under Rule 32 of J&K Security Rules.

2) That when you were detained in Kud Jail, you used to secretly
guide and encourage the illegal activities of the War Council (which was
later on converted into Plebiscite Front by you) whose object was to
overthrow the Government of the State. And, therefore, you have
committed offences under sub-clauses (d) and (m) of clause 6 of Rule
28, J&K Security Rules, which is punishable under Rule 32, J&K Security
Rules.

3) That in August 1955 you along with some other accused met
Sajawal Khan, absconding accused, who had come there from Pakistan,
at the house of Ghulam Mohd. Butt alias Galla Reda, at Basant Bagh,
Srinagar, and there you impressed upon the necessity of arms and
other materials' supply from Pakistan for creating communal disturbances
and for carrying out sabotage in the State. And, therefore, you have
committed offences under sub-clauses (a), (f), (g) and (m) of Clause 6
of J&K Security Rules, which is punishable under Rule 32, J&K Security
Rules.

4) That you had established contacts and used to correspond with
Pakistani official - absconding accused (those mentioned in the evi-
dence) with the object of causing disturbance of peace in the State,
creating panic and fear among the public and thereby overthrowing the
Government. And, therefore, you have committed offences under sub-
clauses (a), (g) and (m) of Clause 6 of Rule 28 J&K Security Rules,
which is punishable under Rule 32 J&K Security Rules.

And thus you have committed each of the several prejudicial acts
which are offences under Rule 28 J&K Security Rules and which is
punishable under Rule 32 J&K Security Rules 1996 and which is triable
by the Court of Sessions also.

Therefore, by virtue of this writing, hereby I order that in view
of the charges mentioned above, you should be committed to the Court
of Sessions.

Charge-sheet read over and explained.

sd/ Magistrate
(In English)

Dated
29.12.61.

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU & KASHMIR

State Vs. Mirza Mohd. Afzal Beg and Others.
U/s 121-A R.P.C. etc.

Date of Institution: 25.5.1958
Date of Decision: Pending.

Charge-sheet against Mohiuddin Shah, accused,
under Rule 32 of J & K Security Rules, 1996.

I, N. K. Hak, Magistrate First Class, Jammu & Kashmir, Jammu,
frame the following charge against you - Mohiuddin Shah s/o Ali Shah
r/o Bagh Magharmal, Srinagar:

That in connection with and in furtherance of the conspiracy,
the charge-sheet of which has been read over to you, you have committed
the following prejudicial acts:

That in September 1956 or near about i.e. October 1956 you carried
posters and box - containing arms, ammunitions and explosives which
have been sent out from Pakistan, to the house of Mirza Ghulam Qadir
Beg, Anantnag, in a jeep, No. J&K 3294, which was brought for the
Plebiscite Front and which was driven by Syed Mustafa; (b) these
things were brought from Pakistan for spreading panic and disturbance
in the State and you were aware of this. And, therefore, you have
committed offences vide sub-clause (a), (g) of clause 6 of Rule 28
of J&K Security Rules, which is punishable under Rule 32 of J&K
Security Rules. And thus you have committed each of the several
prejudicial acts under Rule 28 of J&K Security Rules, which are
punishable under Rule 32 of J&K Security Rules, 1996, and which is
triable by the court of Sessions.

Therefore, by virtue of this writing I hereby order that in view
of the charges mentioned, your case should be put up before the Court
of Sessions.

Charge-sheet read over and explained.

Sd/- Magistrate
(In English)

Dated,
30.12.1961.

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU

Copy of the charge-sheet against Kh. Ali Shah, accused.
Offences under Rule 32 J&K Security Rules 1996.

I, N. K. Hak, Magistrate First Class, Jammu & Kashmir, Jammu, frame the following charges against you - Kh. Ali Shah s/o Ahmed Shah r/o Bagh Magharmal, Srinagar.

That in connection with and in furtherance of the conspiracy, the charge-sheet of which has been read over to you, you have committed the following prejudicial acts:

1) That you were present in a secret meeting which was held in the end of July 1955 or beginning of August 1955 in the house of Mirza Ghulam Mohd. Beg at Anantnag, and in which besides others, Attaullah Beg, approver, was also present and who had brought a letter from Pakistan. And in that meeting it was exhorted that the Government of Jammu & Kashmir be overthrown with the aid of Pakistan. And, therefore, you have committed offences under sub-clauses (a) and (m) of clause 6 of Rule 28 J&K Security Rules, which is punishable under Rule 32 J&K Security Rules.

2) That in August 1955 in the house of Ghulam Mohd. Butt at Basantbagh, Srinagar, you met an important Pakistan conspirator, Sajawal Khan, absconding accused, so that aid from Pakistan in the shape of money, arms, explosives and bombs could be secured to cause disturbance of public peace, to spread panic among the public, to create disruption in the State and to overthrow the Government of the State. And, therefore, you have committed offences under sub-clauses (a), (g) and (m) of clause 6 of Rule 28 J&K Security Rules which is punishable under Rule 32 J&K Security Rules.

3) That between April 1956 and 27th August 1956 one Mir Ghulam Rasool, accused, had handed over to you a box from his house which contained explosives and which you took in your car No. J&K 66, driven by Syed Mustafa, P.W. That box contained explosives which had been brought from Pakistan to spread panic and create disruption in the State and of which you were fully aware.

And between April 1956 and 27th August 1956 on two occasions you took boxes to the house of Mirza Ghulam Qadir Beg, accused, at Anantnag, in your car, which was driven by Syed Mustafa, P.W. Those boxes contained explosives, which have been brought from Pakistan to spread panic and create disruption in the State and you were aware of this. And, therefore, you have committed offences under sub-clauses (a) and (g) of clause 6 of Rule 28 J&K Security Rules, which is punishable under Rule 32 J&K Security Rules, which is triable by the Court of Sessions also.

And thus you have committed each of the several prejudicial acts which are offences under Rule 28 J&K Security Rules and which are punishable under Rule 32 J&K Security Rules 1996, which is also triable by the Court of Sessions.

Therefore, I, by virtue of this writing, hereby order that in view of the charges mentioned above, your case should be committed to the Court of Sessions for trial.

Charge-sheet read over and explained.

sd/ Magistrate
(In English)

Dated,
30.12.61.

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU

Copy of the individual charge-sheet against Mirza Ghulam Qadir Beg.
Offences under Rule 32 of J&K Security Rules, Svt. 1996.

I, N.K.Hak, Magistrate First Class, Jammu & Kashmir, Jammu, frame the following charges against you - Mirza Ghulam Qadir Beg s/o Nizamuddin r/o Sarnal, Anantnag, Kashmir:

That in connection with and in furtherance of the conspiracy, the charge-sheet of which has been read over to you, you have committed the following prejudicial acts:

1) That you were present in a secret meeting held at the end of July 1955 or beginning of August 1955, in the house of Mirza Ghulam Mohd. Beg at Anantnag, which was attended, besides other persons, by Attaullah Beg, approver, who had brought a letter from Pakistan. In this meeting it was exhorted that the Government of J&K State should be overthrown with the help of Pakistan. Thus you have committed offences under sub-clauses (a) and (m) of Clause 6 of Rule 28 J&K Security Rules, which is punishable under Rule 32 J&K Security Rules.

2) That since the inception of Plebiscite Front, i.e. from August 1955 till May 1957, a publicity centre, for secret publication of posters etc. was established at your house. The purpose of this was to create amongst the members of the public, hatred, contempt and disaffection towards the Government and to cause disturbances of public peace. From your house-search, on 26.5.57, besides other documents, news-bulletins of Plebiscite Front - Exp.242/A and Exp.242/B were recovered. Thus you have committed offences under sub-clauses (a), (d) and (f) of Clause 6 of Rule 28 J&K Security Rules, which is punishable under Rule 32 J&K Security Rules.

3) That between April 1956 and 27th August 1956, Kh. Ali Shah, accused, brought two boxes to your house at Anantnag, in his car No.J&K 66. Those boxes contained explosives, which had been brought from Pakistan and the car was driven by Syed Mustafa, PW.

That in September or October 1956 Mohiuddin Shah, accused, brought boxes to your house in jeep No.3294 which had been purchased for the Plebiscite Front and was also driven by Syed Mustafa, P.W. Those boxes also contained explosives, which were brought from Pakistan for spreading panic and disturbance in the State. Therefore, you have committed offences under sub-clauses (a) and (g) of clause 6 of Rule 28 J&K Security Rules, which is punishable under Rule 32 of J&K Security Rules.

Thus you have committed each of the several prejudicial acts which are offences under Rule 28 J&K Security Rules and which are punishable under Rule 32 J&K Security Rules 1996, which is triable by the Court of Sessions also.

Therefore, I by virtue of this writing hereby order that in view of the charges mentioned above, your case should be committed to the Court of Sessions for trial.

Charge sheet read over and explained.

Dated
30.12.61.

sd/ Magistrate

(In English)

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU

Copy of the charge-sheet against Ghulam Mohd. Chikkan, accused, under Rule 32 of Jammu & Kashmir Security Rules, 1996.

I, N. K. Hak, Magistrate First Class, Jammu & Kashmir, Jammu, frame the following charges, against you - Ghulam Mohammed Chikkan, son of Abdul Aziz r/o Karan Nagar, Srinagar.

That in connection with and in furtherance of the conspiracy charge-sheet of which had been read out to you, you have committed the following prejudicial acts.

1) That you maintained contacts and friendly relations with important Pakistani conspirators in years 1956 and 1958 and for overthrowing the State Government and for facilitating wrongful annexation with Pakistan and for facilitating wrongful other necessary objects. In January 1956 during Lahore Cricket Match a sum of rupees one lakh was smuggled to Amritsar from Lahore, Pakistan, for the abovementioned purposes and within your knowledge, through Ahsan Rathar and Ghulam Rasool Butt, P.W.5 and you received the said amount in the presence of Haji Mohd. Ishaq, co-conspirator. Therefore, you have committed offences under sub-clause (m) of clause 6 of Rule 28 of J&K Security Rules, punishable under Rule 32 of J&K Security Rules.

2) That you in September 1958 or near about along with Mir Ghulam Rasool, accused, received arms, ammunition and explosives from Pakistani co-conspirators, Sajawal Khan, Salim Jehangir, absconding accused, and others at Yus Maidan and brought to Srinagar for spreading disaffection, disturbing peace and tranquillity and for making the people panic-stricken.

Therefore, you have committed offences under sub-clause (a) and (g) of clause 6 of Rule 28 of J&K Security Rules, which is punishable under Rule 32 of J&K Security Rules. Thus you have committed each of the several prejudicial acts under Rule 38 of J&K Security Rules which is punishable under Rule 32 of J&K Security Rules, Svt.1996; which also is triable by the Court of Sessions. Therefore, by this writing I order that in view of charges mentioned above, your case should be put up in Sessions Court.

Charge-sheet read over and explained.

sd/ Magistrate

(In English)

Dated
30.12.61.

State of accused (without oath)

Question: Has the charge-sheet been read over and explained to you?

Answer: Yes, Sir. I have heard. All the charges are false and baseless which I will prove in the next Court.

Question: Give a list of those witnesses whom you propose to produce in the trial.

Answer: I am submitting a list of some witnesses just now and for others I reserve my right.

State Vs. Mirza Mohd. Afzal Beg and Others.
u/s 121-A R.P.C. etc.

Copy of the charge-sheet against Sofi Mohammed Akbar.
Under Rule 32 of J&K Security Rules, 1996.

I, N.K.Hak, Magistrate First Class, Jammu and Kashmir, Jammu, frame the following charges against you - Sofi Mohd. Akbar, s/o Assadullah, r/o Sopore, Kashmir.

That in connection with and in furtherance of the conspiracy the charge-sheet of which has been read over to you, you have committed the following prejudicial acts.

1) That you participated in a secret meeting which was held in the house of Mirza Ghulam Mohd. Beg, in the end of July 1955 or beginning of August 1955, and in which besides other persons Attaula Beg, approver, who brought a letter from Pakistan, participated. It was exhorted in that meeting that the Government of Jammu and Kashmir should be overthrown with the help of Pakistan. And therefore, you have committed offences under sub-clauses (a) and (m) or Rule 28 J&K Security Rules, which is punishable under Rule 32 J&K Security Rules.

2) That in August 1955, you met an important Pakistani conspirator, Sajawal Khan, absconding accused, in the house of Ghulam Mohd. Butt at Basant Bagh, Srinagar, for the purpose of securing help from Pakistan, in the shape of money, arms and explosives which could be used for disturbing public peace in the State, for spreading panic among the public and for overthrowing the Government of J&K State. And, therefore, you have committed offences under sub-clauses (a), (g) and (m) of Clause 6 of Rule 28 J&K Security Rules which is punishable under Rule 32 J&K Security Rules and thus you have committed each of the several prejudicial acts, mentioned above which are punishable under Rule 32 of J&K Security Rules Svt.1996, which is also triable by the Court of Sessions.

Therefore, I, by virtue of this writing, hereby order that in view of the above-mentioned charges your case should be committed to Sessions for trial.

Charge-sheet read over and explained.

sd/ Magistrate

(In English)

Dated
30.12.61.

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU.

State Vs. Mirza Mohd. Afzal Beg & Others.
U/s 121-A R.P.C.

Copy of the charge-sheet against Mir Ghulam Rasool,
under Rule 32 of J&K Security Rules.

I, N. K. Hak, Magistrate First Class, Jammu & Kashmir, Jammu,
frame the following charges against you - Mir Ghulam Rasool s/o Mir
Ahmed Shah r/o Rajabagh, Srinagar.

That in connection with and in furtherance of the conspiracy
the charge-sheet of which has been read over to you, you have
committed the following prejudicial acts:

1) That between April 1956 and 27th August 1956 you took out
a box containing explosives from your house and gave it to Kh. Ali
Shah, accused, who took it in his car No. J&K 66 which was driven by
Syed Mustafa P.W. The explosives had been brought from Pakistan
for spreading panic and disruption in the State and you were aware
of it. Therefore, you have committed offence under sub-clauses (a)
and (g) of clause 6 of Rule 28 of J&K Security Rules, which is punish-
able under Rule 32 J&K Security Rules, Svt.1996.

2) That in or about September 1956 at Yus Maidan, you along with
Ghulam Mohd. Chikkan, accused, took delivery of arms and explosives
from Pakistani conspirators, Sajawal Khan and Salim Jehangir,
absconding accused, and brought them to Srinagar, so that disturbance
of peace be caused and public peace may be disturbed in the State.
And, therefore, you have committed offences under sub-clauses (a)
and (g) of clause 6 of Rule 28, J&K Security Rules, which is punish-
able under Rule 32 J&K Security Rules Svt.1996.

And thus you have committed each of the individual offences
under Rule 28 J&K Security Rules, which are punishable under Rule 32
of J&K Security Rules, Svt.1996 and which is triable by the Court of
Sessions, also.

Therefore, by virtue of this writing I order that in view of
the charges mentioned above, your case should be committed to
Sessions for trial.

Charge-sheet read over and explained.

sd/ Magistrate

(In English)

Dated
30.12.1961

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU

State Vs. Mirza Mohd. Afzal Beg & Others.
U/s 121-A R.P.C. etc.

Copy of the charge-sheet against Pir Mohd. Afzal Makhdoom
accused.
Offence under Rule 32 J&K Security Rules, Svt.1996.

I, N. K. Hak, Magistrate, First Class, frame the following charges against you - Pir Mohd. Afzal Makhdoomi s/o Ahmed Shah r/o Khanyar (Daribal), Srinagar.

That in connection with and in furtherance of the conspiracy the charge-sheet of which has been read over to you, you have committed the following prejudicial acts:

1) That you as an active worker of Plebiscite Front, used to provide materials such as newsitems, manuscripts, etc. for the anti-Government posters, the aim of which was to create a feeling of hatred, anger and misunderstanding towards the Government, to create a feeling of hatred and animosity between various sections of the people of the State to overthrow the Government. News-bulletins Exp.141A of about May 1956 and news-bulletin Exp.141 of about May 1957 are written in your hand.

Therefore, you have committed offences under sub-clauses (d), (f), (g) and (m) of clause 6 of Rule 28 J&K Security Rules, which is punishable under Rule 32 of J&K Security Rules.

And thus you have committed each of the individual prejudicial acts under Rule 28 J&K Security Rules, and which is punishable under Rule 32 J&K Security Rules Svt.1996, and which is also triable by the Court of Sessions.

Therefore, I, by virtue of this writing, hereby order that in view of the charges mentioned above, you should be committed to sessions.

sd/ Magistrate

(In English)

Dated
30.12.1961

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU
State Vs. Mirza Mohammed Afzal Beg & Others.
U/s 121-A R.P.C. etc.

Copy of the charge-sheet against Pir Mohd. Maqbool Yalgami.
Offence under Rule 32 J&K Security Rules, Svt.1996.

I, N. K. Hak, Magistrate First Class, Jammu and Kashmir, Jammu,
frame the following charge against you - Pir Mohd. Maqbool Yalgami
s/o Pir Hasan Shah, r/o Vilgam, Tehsil Handwara, District Baramulla,
Kashmir:

That in connection with and in furtherance of the conspiracy
the charge-sheet of which has been read over to you, you have commit-
ted the following prejudicial acts:

1) That in the end of July 1955 or beginning of August 1955, you
along with some other accused were present in a secret meeting which
was held in the house of Mirza Ghulam Mohd. Beg at Anantnag, where
Attaullah Beg, approver, had brought letter from Pakistan. And there
it was exhorted to overthrow the present government with the help
of Pakistan. And, therefore, you have committed offences under sub-
clauses (a) and (m) of clause 6 of Rule 28 J&K Security Rules, which
is punishable under Rule 32 of J&K Security Rules, Svt.1996.

2) That in August 1955, in the house of Ghulam Mohd. Butt at
Basantbagh, Srinagar, you met an important Pakistani conspirator,
Sajawal Khan, absconding accused, so that aid from Pakistan in the
form of money, arms, ammunition and explosives, could be secured for
causing disturbance of peace in the State, for creating panic among
the public and for overthrowing the State Government. And, therefore,
you have committed offences under sub-clauses (a), (g) and (m) of
clause 6 of Rule 28 of J&K Security Rules, which is punishable under
Rule 32 J&K Security Rules 1996.

And thus you have committed each of the several prejudicial acts
under Rule 28 J&K Security Rules and which is punishable under Rule
32 J&K Security Rules 1996, and which is also triable by the Court of
Sessions.

Therefore, I, by virtue of this writing, hereby order that in
view of the charges framed against you, your case should be committed
to the Court of Sessions for trial.

Charge-sheet read over and explained.

Sd/ Magistrate
(In English)

Dated 31.12.61.

Statement of the accused

Court: Pir Mohd. Maqbool Vilgami, has the charge-sheet been
read over to you and explained?

Pir Vilgami: Yes Sir, it is absolutely false and baseless.

Court: Submit the list of your defence witnesses, which you
propose to produce in the trial.

Pir Vilgami: I reserve this for the Court of Sessions.

sd/ Magistrate

IN THE COURT OF SPECIAL MAGISTRATE, JAMMU

Copy of the charge-sheet against Ghulam Mohiuddin Zargar.
Charges under Rule 32 of J&K Security Rules, Svt.1996.

I, N.K.Hak, Magistrate First Class, Jammu & Kashmir, Jammu, frame the following charges against you - Ghulam Mohiuddin Zargar, s/o Abdullajoo r/o Kadipora, Anantnag.

That in connection with and in furtherance of the conspiracy, charge-sheet for which has been read over to you, you have committed the following prejudicial acts:

1) That from the end of 1955 till August 1957 when you were arrested in connection with case State Vs. Rehman Shagoo & Others, you had contacts with conspirators of Pakistan and have been securing illegal financial help from them for disturbing the peace in the State for spreading panic among the public, for spreading hatred, contempt and animosity against the Government and for overthrowing the Government of the State. In this connection in the end of 1955 you received a sum of Rs 7000/- through Abdul Aziz Parwana, P.W. which was sent by Sajawal Khan, an important Pakistani conspirator and absconding accused. And in December 1957, your wife received a sum of Rs 5000/- which had been sent from Pakistan through Syed Mohd. Shah, P.W., and was delivered by Mohd. Sultan Rangrez. Therefore, you have committed offences under sub-clauses (a), (d), (g) and (m) of clause 6 of Rule 28 J&K Security Rules, which is punishable under Rule 32 of Jammu and Kashmir Security Rules.

2) That you were aware of the fact that bombs and explosives from Pakistan were being brought into the State for spreading panic among the public, for causing disturbance of public peace and for creating communal disturbances in the State. They were planted in June 1957 at Palladium Talkies, Srinagar and Hind Kashmir Hotel, Srinagar and also at Aluch Bagh for blowing up of the Bridge. The bomb planted at Palladium Talkies exploded at midnight of 27/28 June 1957, which caused physical and material damage; and a bridge at Alucha Bagh was damaged by the explosion of a bomb on 26/27 June 1957 night. And, therefore, you have committed offences under sub-clauses (a) and (g) of clause 6 of Rule 28, J&K Security Rules, which is punishable under Rule 32 of J&K Security Rules. And thus you have committed each of the several prejudicial acts under Rule 28 of J&K Security Rules and which is punishable under Rule 32 of J&K Security Rules and which is also triable by the Court of Sessions.

Therefore, I, by virtue of this writing, hereby order that in view of the above mentioned charges, your case should be committed to the Court of Sessions for trial.

Charge-sheet read over and explained.

sd/ Magistrate

Date
30.12.61

(In English)

Branches:
"The Dawn", Canal Road,
Jammu Tawi. (Tele:5133)

81/48, Diplomatic Enclave,
New Delhi. (Tele: 32202)

KASHMIR CONSPIRACY CASE

Committal Order announced.

When the Court assembled at 1:15 p.m., Mirza Mohd. Afzal Beg stated:

"Before we resume the proceedings for the day, I submit that Mr. Ghulam Mohiuddin Shah is suffering from colitis and heart trouble. He begs the court to kindly transfer him to Srinagar Central Jail, where he showed considerable improvement during the past months, when he was there for the Hazratbal Case. He submits another application in which he gives a supplementary list of a few witnesses whom he proposes to produce in his defence."

Magistrate: Are the Counsel for Defence present?

G.M. Shah: Yes.

Mr. Mubarak Shah: Sir, last time, I submitted an application to your honour regarding the production before you of Jehangir Khan, allegedly arrested by the Police.

Magistrate: I have disposed off the matter.

Mr. Beg: In what manner?

Magistrate: You will know the order. I have written it on the application.

Mr. Beg: Can we know the order made during the proceedings in the chamber? Can we have the order that the court has given on the application?

Mr. Mubarak Shah: Can we get a reply from the Prosecution?

Mr. Beg: Sir, I want to know the order.

Magistrate: You will be apprised of the order.

Mr. Beg: About the alleged Jehangir Khan's production before you how the matter has been disposed off, what are your orders that have been made on that application. I only wanted to know your orders. Your honour will consider one point. It appears that your honour will pass the final order of committal today and naturally the court will cease to have any jurisdiction.

Magistrate: Jurisdiction what?

Mr. Beg: I wish to bring to your notice that the jurisdiction on this case respecting enquiry, after your honour has passed the order of committal, will cease. After that, I presume, illegally there will be no jurisdiction over this enquiry- the proceedings will terminate thereafter. So, I not only want to find out that order but also to know what it is.

Mr. Mubarak Shah: Kindly let me know whether the Prosecution has given any reply to our application. Have they told you whether any person named as Jehangir Khan by them and shown as accused in this case, has been arrested by them or not. It has been publicised. We have said that we want to know if any such person is in existence and has been produced before you by the Prosecution, who are bound to do so under the Prosecution to do so.

Magistrate: Law will take its course.

Mr. Beg: This is possible only when your honour has not yet announced the committal order. What we have asked for may kindly be made known. Our stand is the same; under Sec. 342 we said that we did not know that man, whether he is any or not. We have no connection with him. If we come to know about the contents of the order as well as about the fact of the alleged arrest, if any, it will be good as your honour will cease to have any jurisdiction once the final order had been passed. We shall, then, be very prejudiced. The Prosecution will reply this; whether actually the arrest has taken place or not or whether it is just like some sort of 'hat trick' by bringing in somebody whom they call 'so-and-so'. That is what we beg of your honour to let us know while your honour has got jurisdiction on this proceedings.

Magistrate: Now, in this case, which has made us to work together for so many years, so many points were raised and many points emerged from the evidence and certain opinions were given. I have endeavoured in my humble way to deal with all the aspects, both legally and factually. I have also tried my best on the basis of law. While considering the material before this court, I came to the conclusion that there is sufficient evidence on record which justify committing them to the Sessions for taking their trial.

I commit the accused to the Sessions for trial for offences under Sections 121-A and 120-B and Rule 32 of the Security Rules, as they are triable by that Court. For the trial in that court, necessary orders will be issued forthwith. Now, with this order the proceedings in this court terminate as far as the accused in this case before the court are concerned.

There are a few consequential orders which also are issued simultaneously. There are three accused in this viz. Mohammed Amin, Mr. Hamdani and Mir Ghulam Rasool, all of whom are on bail.

So far as Mr. Amin and Mr. Hamdani are concerned, the court had recently gone into the matter when the Prosecution had applied for the cancellation of their bail. I have given my orders on that. Since their state of health continues to be bad, in the interest of justice, I grant them bail till the trial court meets.

So far as Mir Ghulam Rasool is concerned, the order of the High Court is that the bail granted to him shall stand automatically cancelled if he is committed to the court of Sessions. I, therefore, hold that his bail automatically stands cancelled. He will, therefore, surrender to the Superintendent, Special Jail, Jammu. I am informed by Mir Ghulam Rasool's counsel that he is not present today. Therefore, I ask his counsel to convey this order to Mir Ghulam Rasool who should surrender before Superintendent, Special Jail, Jammu.

As the presence of the common accused involved in the Hazratbal and Bomb cases is no longer required, I order their immediate transfer to Srinagar to stand their trial in those cases.

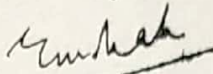
I further order that until the accused are required for trial in the Sessions Court concerned, they will continue to remain in the custody in which they are at present.

We are reaching another stage, and I may express my gratitude for the cooperation that I have received from both the sides. I shall endeavour to watch with interest the fortunes of this case. I personally wish that justice will be done in this case.

Mr. Beg: What you have not done yourself you wish others to do. What justice, as it has been done by you?

Sheikh Saheb: This is a mockery of justice.

Issued by



(G.M. Shah)

Secretary & Defence Counsel,
J&K Legal Defence Committee,
Jammu-Tawi.

January 25, 1962.

To some of us here the way the order was given and the time chosen, has all been terribly painful. The Court would have given the order on the 24th but it adjourned to 25th January without giving any reason. It is now known that some in the Union Government and the authorities in the State manipulated to do this because they wanted the order to be flashed on the 26th of January as a 'lesson to all' and to humiliate and hurt the accused. This sadist action by a handful of persons got India a stigma and marred the joy of celebrations. The politicians in their arrogance and intoxication may not have felt it but even an ordinary man in the street felt sorry at such exploitation and vulgarity. For the people of Jammu & Kashmir and for Kashmiris outside and in Delhi, the day of 26th January turned to be the day of mourning. This incident is a further clear indication of how popular will is being thrown to winds by a few in power.

On 28th December 1961 after reading out the charge-sheet the enquiry court adjourned. On 1st January the newspapers carried a news-item about the arrest of a Jehangir Khan. The background story about this is that about 20 days before the publication of the news of the arrest of Jehangir Khan, a man was arrested at a place crossing the border. He was under the military guards who were interrogating him. 20 days after when Bakshi Ghulam Mohammed went on election tour of the area he was told about the arrest of a person from Pakistan. He forced the Indian Military to hand over the person to him and as soon as this was done a story was built up which was published in the press. In the Kashmir Conspiracy Case one or two prosecution witnesses have referred to a Jehangir Khan, alleged to be absconding in Pakistan. He is also an absconding accused. No one knows who the person is but it is said that there is one Jehangir Khan who is relative of the Deputy Commissioner of Poonch and also the son-in-law of the man who has deposed against him in the Kashmir Conspiracy Case. No one in Kashmir knows him. This information has been passed on to the authorities here so that they may make further enquiries about this person before accepting him as Jehangir Khan.

We know that the Bakshi Government has some people who abscond on order and surrender on order. In the Kashmir Conspiracy Case a few persons are of this nature. Therefore, it was felt that producing this man had only one purpose i.e. delaying the case, as according to law it was open to the Court to hold back the committal order until the alleged absconder, produced before the Court, is also enquired into. Thus every few months one absconder would be produced and the case would be prolonged for ever and ever at the enquiry stage. Due to timely intervention this did not happen, is a matter of satisfaction.

HAZRATBAL CASE: In September 1961 Maulana Mohd. Saeed Masoodi, and a few other accused in the Hazratbal Case had filed a writ of mandamus in the High Court of Jammu & Kashmir to expedite the conduct of the Hazratbal Case. Shri Porus Mehta, advocate, of Bombay and a member of the Legal Aid Committee, very kindly appeared for them in an honorary capacity. The hearing of this petition was on 23rd of January. Exhibit II contains the report of this proceedings and the High Court Order. Since then the Hazratbal Case has come up for hearing in the Sessions Court on 17th February.

Delaying tactics continue and it appears that this will be the order of the day even though the High Court has ordered otherwise.

OTHER CASES: There is an impression that besides these two and the Bomb Case, there are no political cases in the State. This is wrong. There are about two or three dozen cases which are more or less at the enquiry stage and have been going on since 1956 or so. Information about these is being collected.

How Emergency laws are being misused to suppress possible candidates is exhibited in a petition, Exhibit III, that Abdul Latif filed in the High Court. This was before he joined the Praja Parishad and became their candidate. The High Court is in recess and therefore no decision has been taken. Similar is the case of Mohiuddin Sofi, a nationalist worker of standing of Srinagar. Exhibit IV gives details of his case.

II-"No Entry"

Exhibit V contains the new order that I have received from the J&K State Government on the 17th February. It was sent by Registered A/D post. The legal position of this is not the same as that of the last year's order. No legal remedy is possible. This is a clear indication of how the rulers can persecute a citizen if they choose to do so. All actions since 9th August 1953 against Sheikh Mohd. Abdullah and others and those of us who have not seen eye to eye with Union Government's policy in the State have been based on the extra-ordinary powers that the authorities have by not facing us with facts. They cover up their weaknesses under the clause that "it would be against the public interest to communicate the grounds and the particulars". It is the most powerful method of character assassination against which until now no voice has been raised nor national conscience aroused to revolt against this, is a matter of concern. This can only be done if the Sarva Seva Sangh and Vinobaji would be good enough to take up this matter seriously and help in mobilising public opinion to assert against such tactics.

III-Banning of "Nawa-i-Kashmir"

On 6th of November 1961 the West Bengal Government took action of banning this book but they did it so surreptitiously and kept their notification so secret that before we could trace it down, it became time barred for any legal action in the West Bengal High Court. The Publisher, Mr. Figar, had approached the Home Minister and also the departments concerned to find out if such a notification had been issued. The all told him that it had not been issued. It was his mistake to have accepted their word. Later on when the Andhra Government notification came to our notice, we traced down the notification of

Government of West Bengal. A petition, Exhibit VI, has been filed in the Andhra Pradesh High Court and also in Uttar Pradesh High Court. We are now looking into the gazettes of various States and find that notifications banning the book have been issued as below:

West Bengal:	6.11.1961	Orissa:	5.12.1961
Kerala:	18.11.1961	Madras:	4.12.1961
Maharashtra:	30.11.1961	U. P:	23.12.1961
Gujarat:	30.11.1961	Andhra:	23.12.1961
Rajasthan:	2.12.1961		

It appears that all other States have followed suit in a routine way without giving any thought to the subject and without independently examining the issue on merits. I tried to stop this development because I felt that though it would benefit us, the Defence, in national interest it was harmful. But now that this has happened, it has given us an excellent opportunity to cultivate public opinion in favour of defence. Everywhere we have been getting good response from lawyers - appearing in honorary capacity. The unofficial blackout what really Sheikh Saheb had said that the authorities were able to impose, is breaking through this action of theirs. So, without any effort of ours, it is the government which has developed the movement in favour of defence for which I think we should be grateful to them and thank them!!

I know majority of the States, if they had studied the book and had come to their independent findings, they would never have banned the book. After the election fever, and all that goes with it, subsidies, it will give us a new field to get the Government decision re-examined but for this we have to make great preparations before hand.

(To be continued)

Mandela Gandhi

Encls:

Phone: 32202.

81/48 Diplomatic Enclave,
New Delhi-24.
April 2, 1962.

SALIENT DEVELOPMENTS
(In continuation of my previous note dated
20.2.1962)

Legal (Political Cases):

After writing the enclosed note, the latest developments up-to-date are:

THE KASHMIR CONSPIRACY CASE: It should be remembered that the Special Magistrate enquiring into the Kashmir Conspiracy Case, in his committal order has not specifically mentioned as to which Sessions court he was committing the case. Then again he did not give the copy of the committal order on the day he announced it in the court, i.e. on 25.1.1962, even though Mirza Mohd. Afzal Beg and others had asked for it in the open court and as well as through the written applications. Special Magistrate's own term of appointment came to an end on 31st January, 1962. For some time it was not known as to who should be approached for the copy of the committal order. On the enquiries made of the Sessions Judge, the Defence lawyers were told to take the copy from the office but the office adopted delaying tactics. As a result of this Mr. Beg was forced to press for it through a formal application. At last on 7.3.1962, a copy was given to him only and it is said that copies for others would be made available after some time.

I do not know the legal aspects of it but as a lay person the committal order, which runs into 1040 pages, reads more as an administration report than a legal document dealing with the legal issues and their determination. The Magistrate has tried to reply to the criticism of topics and extraneous matters which were neither raised nor referred to by the parties in the case. It reads as a propaganda document for the Prosecution and goes much beyond the terms of reference which were given to the Special Magistrate. The purposeful delay in giving a copy of the committal order to the accused and that also giving only one copy and other following circumstances create legitimate apprehensions about something brewing behind the curtain. For example:

(a) After having handed over the charge as Enquiry Magistrate on Feb. 10, 1962, the Press announced the extension of his term as Special Magistrate till March 31, 1962.

(b) He continues to stay in the old premises of the court and the jail and is seen dealing with the Kashmir Conspiracy Case papers in the court specially constructed for the case. Recently he told the Defence counsel that he was getting the copies of the committal order made and that most probably they will get them after 3 or 4 weeks. What concern he has with the papers now?

(c) It is believed that this Magistrate is also enquiring into Jehangir Khan's case about whom I had made mention in my note dated 20.2.1962. Further information is given later in this note.

On March 18 Mr. Beg was given an order of the Special Magistrate apparently signed on January 31, 1962, to the effect that the court had rejected the request of the Defence to call in witnesses named in the list. The list included the names of Bakhshi Ghulam Mohammed, Saraf, Sadiq and others! * No reasons were, however, assigned to the rejection of such Defence witnesses. When this was criticised in the Jammu Bar library of the High Court, the Prosecution lawyers remarked that the Magistrate did not want to do so, but this had been done to comply with the wishes of Panditji whose name had been

* See Enclosure No.3.

given by the Defence as a witness but who did not like to appear as a witness in the case. The Magistrate had to "disallow" the whole witnesses' list.

My appearance as Defence witness has been disallowed. The little opportunity I had to get the court to look into the character assassination made by the Prosecution by enlisting me as a co-conspirator is also closed unless a way is found to challenge this order of the court. This is gross injustice to all of us. The refusal to allow important persons to come as Defence witnesses itself is proof of the weakness of the Prosecution story in the Kashmir Conspiracy Case. It is obvious they do not want to get this myth exposed by deposition of impartial persons who can throw real light on many matters alleged in this case. How this game can be in the national interest or in the interest of India's international politics or for the honour of our leaders, one fails to understand. Taking shelter under our leaders' name, they have managed to get themselves absolved from the inconvenience of being the Defence witnesses which the accused had sought them to be.

HAZRATBAL CASE: It continues to be adjourned and the next date now is 10th April, 1962.

JEHANGIR KHAN: In the enclosed note dated 20.2.1962 I have given a background of Jehangir Khan, as could be collected. The latest about him is said to be as follows:

It is reliably learnt that he is in the hands of the Intelligence Department. The term of the Enquiry Magistrate of Kashmir Conspiracy Case has been extended till end of March. He has paid a number of visits to Akhnoor where he had nothing to do. It is believed that some proceedings against Jehangir Khan are being held secretly. The authorities under whose custody Jehangir Khan is, are yet vacillating whether they should make him an approver or an accused. He was also brought to Jammu. No one knows what is happening with him, but those who have seen him say that he is well-dressed and happy-go-lucky type of person, not at all nervous of Policemen under whose custody he has been now. It is believed that the Police is trying to induce and coerce Jehangir Khan to depose against Sheikh Saheb. In Jammu, there is an interesting story afloat. They say that a well-dressed man with a suit case walked into Indian border and went to a hut, sat there, apparently expecting the Police to arrest him. On this side, just at that time, the Police wanted to go to that border. As it was under Military control, the Police was not allowed to proceed further. They are believed to have told the Military that they wanted to go to a particular hut where a person was to be arrested. The Military took benefit of this information, went to the hut and took Jehangir Khan into custody. Jehangir Khan is known to be Bakhshi's man before he left for Pakistan. So if the man called Jehangir Khan is the same person the neighbours in Srinagar, where he belongs to, would know him. Recently, the newspapers have carried the following news:

"Alleged Illegal Entry of Pak Intelligence Officer"

Hearing of Case Adjourned
(By our Correspondent)

Jammu, March 17.- The City Magistrate, Kotwal Tek Chand, today fixed March 31 for the next date of hearing of the Cease-fire Violation Case, in which the accused Saleem Jehangir is alleged to have crossed into the Indian territory from the other side of the cease-fire line.

When the hearing of the Case was resumed today, the Police requested the court for an adjournment for the further investigation and interrogation of the accused so that it might be able to produce a complete challan in the court.

The learned Magistrate granted the request and fixed March 31 the date for next hearing.

The Police has already presented an incomplete challan against the accused Saleem Jehangir under section 2/3 Ingress Internal Movement Control Order. It is alleged that the accused entered into the Indian territory from the Pakistan illegally occupied territory of Kashmir without any passport. Soon after the Police authorities got a clue about his entry into the Indian territory, he was arrested in Poonch sector of the Jammu Province.

The accused Saleem Jehangir, who is said to be an officer of the Pakistan Intelligence is also an accused in the Kashmir Conspiracy Case."

(Kashmir Post, Jammu: March 20, 1962)

It is interesting to note that the Magistrates in Poonch have the jurisdiction for the offence of crossing the cease-fire line. Why a Jammu Magistrate has been asked to take cognizance of this case is obvious. Through this device the Special Police and the Prosecuting want him to be kept near so that they can exercise influence over him. He is reported to have been arrested in December, 1961. Till now why the simple challan of crossing cease-fire line was not presented against him is significant. Under cover of this case the Prosecuting agency of Kashmir Conspiracy Case want to keep him near itself.

To members of
(1) Legal Aid
Committee

Mridula Sarabhai
Mridula Sarabhai

(2) to Vaidya

Encls:

1. Salient Developments (from 7th December 1961 to 20th Feb. 1962)
2. Sheikh Saheb's reply regarding submission of a list of witnesses, entitled "My Defence Witnesses"
3. Extracts from proceedings dated 29th December 1961 and 15th January 1962 with regard to the defence witnesses of Mirza Mohd. Afzal Beg and Mr. Mohiuddin Shah.